

IF LOOKS COULD KILL, BANS ON PHYSICAL FEATURES OF ASSAULT STYLE WEAPONS:
CONTRIBUTION TO FIREARM AND GUN VIOLENCE SAFETY OR VIOLATION OF THE
SECOND AMENDMENT?

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Abstract

The number of mass shootings with assault rifles, such as AR-15's, continue to make headlines, fuel public concern over gun violence, and spur elected officials to find solutions for what remains a highly divisive issue in American politics. Recently, it was reported that in 158 congressional districts at least one mass shooting has occurred in 2019; that is more than a third of the nation's congressional districts.¹ In part because so many communities are directly impacted by mass shootings, there is growing bi-partisan support for gun control legislation such as assault weapons.² Supporters of an assault weapons ban contend that no one needs such weapons because they are "weapons of war." Yet, in truth guns labeled "assault weapons" are merely cosmetic in appearance to military weapons. The difference is that military weapons are capable of automatic fire while civilian versions are capable of semiautomatic fire. This makes them similar to other semiautomatic firearms on the market. This thesis examines whether an assault weapon ban would likely reduce gun violence and if there are legitimate concerns with respect to infringement of the Second Amendment right to bear arms. Questions that will be addressed are: What should the criteria be for regulating gun ownership? Should appearance alone be sufficient grounds to ban one type of weapon over another, i.e., is there evidence that particular types of guns are more often used in mass shootings? Are universal background checks or other requirements equally or more important to consider? What would a comprehensive approach to gun control

¹ Jarvis et al (2019), 1.

² Ibid.

include? For example, would greater access to mental health programs reduce the amount of gun violence?

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Preface

I wish to dedicate this to my parents Arthur Holmstock and Sondra Albert; my fraternal grandparents Max and Jen Holmstock, and my maternal grandparents William and Dorothy Albert. Unfortunately, you are not with us anymore, but I think you would be proud of my accomplishments to date. I want to thank my cousin Stephen Holmstock for reading a version of my rough draft and providing his thoughts. Thanks to modern technology and email for making this possible since Alaska is a long way from New Jersey. I also wish to thank my coworker and fellow classroom instructor with the Internal Revenue Service Blaize Buckley for listening to me go on about my thesis topic and providing her input and reading parts of the rough draft. I wish to thank my former manager Leslie Chambers with the Internal Revenue Service. You did not fuss when I had to take a week off in April 2016 because I got behind in my schoolwork. I wish to thank Dr.'s Kristine Rabberman and Nancy Watterson who were my MLA Capstone advisors and readers at Penn. Through my research for my Capstone I became interested in continuing my education and settled on Government at JHU. Finally, I discovered graduate school is expensive, especially when you attend two graduate schools. So please donate generously to the Joel M. Holmstock Grad School Bankruptcy Prevention Fund (#JMHBankruptcyPreventionFund).

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Introduction

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed”³

Gun control is a highly controversial issue in America today. There is a deep divide among Americans on gun policy, as well as being divided on the subject of gun ownership.⁴ This has led to a “stumbling block to the passage of policies to reduce gun violence.”⁵ In addition, gun rights scholarship is “unbalanced.”⁶ There is disagreement among scholars as to what constitutes when a weapon is “dangerous and unusual” thus making it unprotected by the Constitution.⁷ For example, does the right apply to the kind of weapons used by militiamen in 1787, or does it apply to weapons used by today’s “regulated” militia?⁸ Is there a consensus among today’s legal scholars that the right to bear arms is an individual right?

Another issue is that “gun rights scholarship suffers from hyper-partisanship.”⁹ Politicians will also use mass shooting tragedies, such as Sandy Hook in Connecticut, to

³ “The 2nd Amendment of the U.S. Constitution.” National Constitution Center – The 2nd Amendment of the U.S. Constitution. Accessed May 10, 2019. www.constitutioncenter.org/interactive-constitution/amendments/, and *The Federalist Papers*, 558.

⁴ Barry et al. (2018), 878.

⁵ Ibid.

⁶ “Second Amendment Scholars Blocher and Miller Co-direct New Duke Center for Firearms Law: Duke University School of Law,” Second Amendment Scholars Blocher and Miller Co-direct New Duke Center for Firearms Law | Duke University School of Law, accessed August 15, 2019, <https://law.duke.edu/news/second-amendment-scholars-blocher-and-miller-co-direct-new-duke-center-firearms-law/>.

⁷ Ibid.

⁸ Ingram and Ray (1997), 492.

⁹ “Second Amendment Scholars Blocher and Miller Co-direct New Duke Center for Firearms Law: Duke University School of Law,” Second Amendment Scholars Blocher and Miller Co-direct New Duke Center for Firearms Law | Duke University School of Law, accessed August 15, 2019,

push for more gun control.¹⁰ But first we need to look at the historical context of the Second Amendment and see how it may be applied today. According to Stephen P. Halbrook, the Second Amendment “has been subjected to politically-valued, result-oriented interpretation.”¹¹

However, the Second Amendment has a history, like most other provisions in the Constitution.¹² The Second Amendment was modified from and expanded upon the English Bill of Rights of 1688.¹³ The right was said to be a moral check against “the usurpation and arbitrary power of rulers...” as well as “...efficient means of regaining rights when temporarily overturned by usurpation.”¹⁴ As noted above, this is not the full text of the Second Amendment – its purpose was to state that citizens in order to be part of a state militia could “bear arms” to protect the newly formed government and communities from the threat of English monarchy. That is why the Third Amendment is there too. The context is not to arm citizens to challenge the U.S. government or a politician, as our system of government is designed so that we have elections and other nonviolent means to participate in and change the government.

Those who favor a broad individual right to possess and use guns argue the Second Amendment bars infringement by the states in addition to the federal

<https://law.duke.edu/news/second-amendment-scholars-blocher-and-miller-co-direct-new-duke-center-firearms-law/>.

¹⁰ Faria (2013), 8.

¹¹ Halbrook (1991), 131.

¹² Cooley (1880), 270.

¹³ Ibid.

¹⁴ Ibid.

government.¹⁵ This position is based on the right, which was “incorporated” through the Fourteenth Amendment, therefore it applies to the states.¹⁶ Regardless of the Second Amendments applicability to the states, most states included a right to bear arms in their own state constitutions (in some the right is not linked to the militia).¹⁷ These state constitutions protect the following individual weapons rights: defense of self and others, crime deterrence, hunting and sport, and “for other lawful purpose.”¹⁸

Gun control proponents argue that the Second Amendment is a collective right and that the original militia has evolved into the modern National Guard.¹⁹ Those who support the idea that the National Guard is the modern militia rely in part on the fact the National Guard refers to itself as a militia.²⁰ However, Halbrook refutes this notion as it is applied to the right of the people to keep and bear arms and the state militia power.²¹ According to Ingram and Ray the only purpose for the Second Amendment was to “assure that there would be effective state militias.”²² This was done by guaranteeing possession of arms by the individuals who made up the militia.²³

There are numerous reasons why people want to own and use guns. These include defense against crime both for self and property, hunting, target shooting,

¹⁵ Ingram and Ray (1997), 492.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid. 492-3.

¹⁹ Ibid.

²⁰ Ibid., 442-3.

²¹ Halbrook (1991), 131-2.

²² Ingram and Ray (1997), 499.

²³ Ibid.

collecting or “just like to have a gun.”²⁴ Currently American civilians own an estimated 300 million firearms.²⁵ This means there is almost one gun for every American living in the United States.²⁶ At the same time, Americans are horrified by mass shootings and elected officials feel compelled to find public policy solutions to stop such occurrences and ensure greater public safety. Due to the aforementioned it makes it harder to find solutions to problems of “gun violence.”²⁷ Some citizens strongly support their right to own guns and are wary of any government gun control regulation. Other citizens believe our society is too prone to violence and the readily available high-powered weapons increase the likelihood of mass shootings. No doubt about it, gun control is one of the most polarizing issues in America. This is fueling emotionalism used to bolster arguments by both side of the issue when arguing for or against political action.²⁸

Due to this unbalanced approach to Second Amendment scholarship, such as trying to determine when a firearm is unusual and therefore not protected by the Second Amendment, and the actions of politicians that politicize mass shooting events, this paper will explore how banning “assault weapons” and the features on assault weapons, as well as other forms of gun control could be interpreted in regards to the Second Amendment. This will be done through written documentation and commentary

²⁴ Ibid., 491.

²⁵ Faria (2013), 8.

²⁶ Ibid.

²⁷ "Second Amendment Scholars Blocher and Miller Co-direct New Duke Center for Firearms Law: Duke University School of Law," Second Amendment Scholars Blocher and Miller Co-direct New Duke Center for Firearms Law | Duke University School of Law, accessed August 15, 2019, <https://law.duke.edu/news/second-amendment-scholars-blocher-and-miller-co-direct-new-duke-center-firearms-law/>.

²⁸ Faria (2013), 9.

published throughout the 19th century, and a discussion of how language and punctuation has changed from the late 18th century when the Constitution was written to the present. This will be followed by how the Second Amendment may properly be read and interpreted today.

Second, this paper will discuss a brief history of national and state gun control including the National Firearms Act, the Gun Control Act of 1968, the ATF importation bans of certain firearms in 1989, the Brady Bill, and the National Assault Weapons Ban of 1995 signed into law by President Clinton. The reasons for each law and intended purpose will be discussed. Following will be a discussion of their success and failures.

Third, this paper will define the different types of firearms using Bureau of Alcohol, Tobacco and Firearms (ATF) definitions as well as a comparison to State of New Jersey definitions provided by the New Jersey State Police (NJSP). The term “assault weapon” will be discussed as well as defined. Evidence will be presented to show that so called “assault weapons” are merely cosmetic in nature to military weapons and are no more dangerous or deadly than other types of weapons that civilians can legally obtain.

Fourth, this paper will discuss the pros and cons arguing for and against gun control and the effects that politicians and media play in shaping public opinion. Statistics from the Bureau of Justice Statistics (BJS), the FBI Uniform Crime Reports (UCR), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and scholarly research will show that gun control, in general and banning assault rifles in particular, may not perform as well as intended. In addition, the literature indicates gun ownership can deter and even prevent crime. Furthermore, the literature in favor of “bearing

arms” from the eighteenth century through the twenty-first century does not explicitly say what (fire)arms a person can bear. However, some commentary discusses types of specific firearms such as handguns being used for conceal-carry.

This paper will conclude with a summary of the findings in each of the three chapters. Unfortunately, this paper will not resolve the arguments for and against gun control, and it may even contribute to further arguments. What this paper seeks to accomplish is to point out that firearms are part of America and Americana going back to its founding. This paper seeks to highlight other possible causes for gun crime and mass murders that can benefit from further exploration and study.

Chapter 1: History of the Second Amendment and Interpretation

Stephen P. Halbrook, a Second Amendment proponent and attorney, argues the Second Amendment is in the Bill of Rights to allow citizens to protect themselves from a tyrannical government should they need to. Rather than have a standing army, the citizens were to be armed so that they could assemble and if necessary, fight off any government encroachment that would seek to take their freedom. Allowing the citizenry to keep their personal arms would ensure they had the means to fend off a standing army or even a select militia.²⁹

The Second Amendment is an offshoot and derived from the English Declaration of Rights of 1689. The declaration included a provision, stating “Subjects are Protestants may have Arms for their Defense suitable to their Conditions and as allowed by Law.”³⁰

²⁹ Bogus (2000)

³⁰ Ibid., 11.

The author of a 1994 article titled *To Keep and Bear Arms: The Origins of an Anglo-American Right*, Joyce Lee Malcolm theorized this created an individual, English right to have arms (i.e., it gave individuals the right to keep and bear arms) in which the American founders incorporated into the Second Amendment.³¹

In 1989 constitutional scholar and liberal Democrat law professor Sanford Levinson wrote about his affection for the individual rights model and theory of open revolt when he published the article: *The Embarrassing Second Amendment* in the *Yale Law Journal*. It is a unique situation when a well-known liberal constitutional law professor is in favor of allowing the citizenry to take up arms against their government even if it offended his personal and political beliefs. This possibly suggests that constitutional scholars do not take Second Amendment study seriously.³² Additionally, Levinson wants the Democratic party to stop supporting gun control because he believes the party needs gun owners in their base.³³

According to Akhil Reed Amar of Yale Law School, “A good many modern scholars have read the Amendment as protecting only arms-bearing in organized ‘state militias,’ such as SWAT teams and National Guard units. If this reading were accepted, the Second Amendment would be at base a right of state governments rather than Citizens.”³⁴ Amar believes this is not the case as the right is given to the people and not the states.³⁵ Amar’s interpretation of the word “militia” means “all citizens capable of

³¹ Ibid.

³² Ibid., 12-3.

³³ Ibid., 13.

³⁴ Ibid., 15.

³⁵ Ibid.

bearing arms” as this is how the term was understood at the time.³⁶ “Militia” is defined in the Constitution but the founders disagreed about how the militia should be organized.³⁷ While Madison favored a universal militia and Hamilton favored a select militia they agreed to leave this up to Congress; and the Constitution expressly gives Congress the power to organize the militia.³⁸ Therefore, the militia is what Congress decides it is.³⁹

A problem then arises; how can the armed militia be the defense against government tyranny if it is organized and regulated by the government itself?⁴⁰ Leonard W. Levy wrote in his book about the Bill of Rights that “The right to bear arms is an individual right” and “the right is an independent one, altogether separate from the maintenance of the militia.”⁴¹ It appears the amendment was partly designed to prevent the federal government from destroying the state militias.⁴² In 1999, Laurence H. Tribe of Harvard Law School, wrote in his third edition of *American Constitutional Law* that “the militia included all able-bodied, adult, white males” in the eighteenth century.⁴³ After passage of the Thirteenth Amendment (abolition of slavery) and the Nineteenth Amendment (women’s right to vote) this this right belonged to everybody. Tribe was saying the Second Amendment does grant individuals a constitutional right, but all constitutional rights must be taken seriously, and none of the rights are absolute.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid., 17.

⁴² Ibid.

⁴³ Ibid., 18.

According to Tribe gun control measures that “seek only to prohibit a narrow type of weaponry (such as assault rifles) or to regulate gun ownership by means of waiting periods, registration, mandatory safety devices, etc. are constitutional.”⁴⁴ Accordingly “it is not possible to mark the boundaries of a right, and then decide what regulations are constitutionally permissible, without first clearly stating the purpose of that right.”⁴⁵

Congress has the authority to arm and organize the militia, but the Second Amendment prevents Congress from taking arms from the militia or organizing the militia out of existence.⁴⁶ Thus the Second Amendment protects the states right to have an armed militia. As previously stated, no right is absolute, therefore “reasonable” and “realistic” gun controls are constitutionally permissible.⁴⁷ The question then becomes what is reasonable and what is realistic? The right to bear arms is “self-protection.”⁴⁸ But the term “self-protection includes self-defense and collective defense without definitively including or excluding either.”⁴⁹

The “collective-rights” interpretation considers the “right to bear arms” related to service in the militia.⁵⁰ This view can be traced to 1915 when Main Supreme Court Justice Lucilius A. Emery summarized the “modern understanding” of the Second Amendment as protecting a collective right.⁵¹ In contrast, the “individual rights” interpretation became popular in the late 1980’s and 1990’s and shifted popular

⁴⁴ Ibid., 19.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Zuidema (2018), 816.

⁵¹ Ibid., 815-7.

academic thinking.⁵² The Second Amendment along with the other nine Amendments in the Bill of Rights was to prevent tyrannical government from suppressing the rights of dissidents.”⁵³ Post Constitution ratification commentary indicates the understanding of the Second Amendment as the right to self-defense is one of the laws of nature.

It is interesting that Congressional debate on the passage of the Fourteenth Amendment involved the Second Amendment.⁵⁴ For example, one senator pointed out the “right to bear arms for the defense of himself and his family and his homestead” as an “indispensable” safeguard of liberty.⁵⁵ Senator Jacob Howard, who introduced the Fourteenth Amendment, thought the Second Amendment would force states to respect “the personal rights guaranteed and secured by the first eight amendments to the Constitution; such as freedom of speech and of the press; ...the right to keep and bear arms.”⁵⁶

The meaning of the Second Amendment is clear to many scholars.⁵⁷ The meaning can be summed up in a 1789 quote from James Madison’s friend Tench Coxe: “As civil rulers, not having their duty to the people duly before them, may attempt to tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their power to the injury of their fellow citizens, the people are confirmed by the next article in their right to keep and bear their private arms.”⁵⁸

⁵² Ibid., 817.

⁵³ Ibid., 818.

⁵⁴ Ibid., 820.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

As previously stated above, the militia included the whole armed populace, and the Founders had a fear of professional military and select militias.⁵⁹ Citizens who had their own guns were part of the checks and balances to prevent government from becoming tyrannical.⁶⁰ It should be noted the 1939 Supreme Court ruling *U.S. v. Miller* acknowledged that militiamen “were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.”⁶¹

Constitutional originalists believe “the Constitution is enduring and should not be altered to coincide with modern public opinion.”⁶² Viewing the constitution as a “living constitution” may induce judges to loosely interpret the Constitution to suit their personal views. To prevent this from occurring the Constitution could be updated to reflect modern language and punctuation rules in order to promote a better understanding by modern scholars.⁶³ Justice Scalia wrote in his 1997 essay explaining originalism: “If the courts are free to write the Constitution anew, they will, by God, write it the way the majority wants; the appointment and confirmation process will see to that. This of course, is the end of the Bill of Rights, whose meaning will be committed to the very body it was meant to protect against: the majority.”⁶⁴

While there are several amendments that were adopted after the U.S. Constitution was ratified; most are still applicable today.⁶⁵ The Bill of Rights, the first ten

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid., 432.

⁶³ Ibid., 435.

⁶⁴ Ibid., 435-6.

⁶⁵ Ibid.

amendments, were enacted in 1789.⁶⁶ They concern civil liberties and restrictions on the federal government.⁶⁷ Several states refused to ratify the Constitution without a Bill of Rights; seeing a threat to their freedom.⁶⁸ When the Fourteenth Amendment was added it incorporated the Bill of Rights to include restrictions on state governments.⁶⁹ The intention of the Bill of Rights was to alleviate the public's fear of the Constitution by guaranteeing personal freedoms and limiting government's power over the people.⁷⁰

Professor Akhil Reed Amar, of Yale Law School, states "leading constitutional casebooks treat the structure of government and individual rights as separate blocks, and the conventional wisdom seems to be that the original Constitution was concerned with the former; the Bill of Rights, the latter."⁷¹ However, Professor Amar refutes the notion that the Bill of Rights and the original Constitution represented two different types of regulatory strategies.⁷² It has been acknowledged that the original Constitution proposed by the Philadelphia convention focused more on organizational structure and democratic self-governance such as federalism, separation of powers, bicameralism, representation, and constitutional amendment. In contrast the Bill of Rights does not address these issues, but it does grant individuals and minorities with rights to combat popular majorities.⁷³

⁶⁶ Ibid., 34.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Amar (1991), 1132.

⁷² Ibid.

⁷³ Ibid.

The “Standard Model” maintains that individuals have a right to own guns in the United States.⁷⁴ Scholars who use the Standard Model have differing views on the types of guns that can be kept, while they maintain the right to keep a gun is protected, along with restrictions that should be allowed.⁷⁵ Kopel uses the term “anti-individual” theory to describe someone in the late twentieth century who competes with the Standard Model.⁷⁶ The leading anti-individual theorist Handgun Control’s attorney Dennis Henigan argues “the Second Amendment protects state governments’ right to be free from federal interference with their militias.”⁷⁷ The anti-individual view by Henigan and others believe the Second Amendment limits the Congressional militia powers created by Article I of the Constitution.⁷⁸ States’ rights supporters have not provided what those limitations are.⁷⁹ States’ rights theorists are clear about what the Second Amendment does not do despite being unclear about what the Second Amendment does do as privately-owned weapons are no longer used to arm citizen militias.⁸⁰ Another anti-individual theory may be called the “nihilist Second Amendment.”⁸¹ This theory argues the Second Amendment does not have a meaning and only “wacky scholars” believe the Second Amendment indicates individuals have a right to own firearms.⁸²

“Collective rights” is a term that is sometimes used in connection with anti-individual interpretations of the Second Amendment to indicate the right belongs

⁷⁴ Kopel (1998), 1362.

⁷⁵ Ibid., 1365.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid., 1366.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

collectively to the people, and not to an individual, therefore it belongs to the government.⁸³ “Collective rights” proponents can either adhere to a states’ rights or nihilist approach to the Second Amendment.⁸⁴

A third variant of the anti-individual theory acknowledges that the Second Amendment was intended to preserve the ability of all the people to have guns and to know how to use them.⁸⁵ But only so long as the people are like “the people” contemplated in the republican theory of the Second Amendment: virtuous, unified, homogenous, imbued with a shared vision of the common good, and trained by their state governments in the use of firearms.⁸⁶ This is to say that the American people today no longer fit the description of “the people;” thus the Second Amendment is obsolete. Another trait shared by the different factions that debate the Second Amendment insist their own interpretation has always been the common understanding of the Second Amendment.⁸⁷ Anything to the contrary is a modern fiction invented by the other faction.⁸⁸

It should be apparent that there are just as many theories as to why the Second Amendment is not an individual right as there are for theories that it is an individual right. The same applies to states’ rights theories and the militia. It should be acknowledged that there is at least one scholar, law professor Sanford Levinson, who makes the claim that Democrats should stop pushing for gun control to draw more gun

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid., 1366-7.

⁸⁶ Ibid., 1367.

⁸⁷ Ibid.

⁸⁸ Ibid.

owners into their base. This may go a long way towards reducing hyper-partisanship and finding compromises to gun control legislation if it can be successfully accomplished.

Constitutional scholars and historical view of the Second Amendment

The guarantee of the right of the people to keep and bear arms is affirmed by the other provision in the amendment – the provision regarding a militia that is distinct and separate from a standing army and subject to Congressional control. This means the common citizen is then relied on rather than a standing army since the citizen supplies his own arms. One should also note that the Second Amendment refers to the security of a “free State” not the security of “THE STATE.”⁸⁹

According to the state’s right interpretation, the Second Amendment was motivated by fear that Congress might order the states’ organized militias disarmed leaving the states powerless against federal tyranny.⁹⁰ This view sees the amendment as being out of date due to the course of American history.⁹¹ The belief was that the purpose of the Second Amendment was to place the states’ organized military forces beyond the federal government’s power to disarm, thus assuring states would have sufficient forces to resist federal encroachment including the power to resist by arms if necessary.⁹² Basic military defense of the country would be in the states’ power to maintain their own organized military forces.⁹³ Accordingly, the Second Amendment does not guarantee “the right of any individual against confiscation of arms, and instead

⁸⁹ Ibid., 1244.

⁹⁰ Kates (1983), 212.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

guarantees an exclusive right of the states, which only the states have standing to invoke.”⁹⁴

Colonial households had at least one gun on hand going back to the earliest days of colonization.⁹⁵ Possession and use of guns was largely unrestricted and often mandated by colonial legislatures to increase public safety and provide for the common defense.⁹⁶ Even as towns and cities grew a frontier mentality was maintained by most people including the desirability for the possession of weapons.⁹⁷ “Many U.S. citizens rightly deem possessing a firearm as their inalienable right,”⁹⁸ and the Constitution was created and adopted with the intention of giving rights to the people.⁹⁹

The Second Amendment was adopted by Congress in 1789 and ratified two years later.¹⁰⁰ The Bill of Rights, including the Second Amendment, was ratified in December 1791.¹⁰¹ The Second Amendment to the United States Constitution gives every citizen the inalienable right to have a gun in their home, whether it is a revolver or rifle.¹⁰² It does not define “whom, how, when, or for what purpose weapons should be possessed.”¹⁰³ Gun rights scholars contend that the Second Amendment means everyone has the right to own and carry firearms and guarantees the right to have a state militia¹⁰⁴ “The Second Amendment was written to protect people from the risk of a

⁹⁴ Ibid., 213.

⁹⁵ Ingram and Ray (1997), 497.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Stein et al. (2016), 41.

⁹⁹ Ibid., 33.

¹⁰⁰ Ibid., 34.

¹⁰¹ Zuidema (2018), 814.

¹⁰² Ibid., 41.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

newly created government becoming tyrannical,”¹⁰⁵ and gives the people the ability to overthrow a tyrannical government.¹⁰⁶ But it is also seen as giving individuals the constitutional right to “keep and bear arms.”¹⁰⁷ Albeit conditions for their acquisition and usage are regulated by state laws.¹⁰⁸ The threat of foreign and domestic terrorism and the threat of a tyrannical government makes the Second Amendment still necessary today.¹⁰⁹

Another factor that may lead to differing interpretations of the Constitution and the Second Amendment is that punctuation and syntax rules have changed dramatically in the past 200 years. This has led to difficulty in interpreting the Second Amendment.¹¹⁰ For instance, eighteenth century use of punctuation and capitalization was excessive and seems random.¹¹¹ On the other hand, modern rules of grammar are extremely strict.¹¹² This leads to readers giving greater weight to the punctuation of the U.S. Constitution and the Bill of Rights than it possibly deserves.¹¹³

The meaning of words has changed or have been lost entirely over the years making matters worse.¹¹⁴ The two clauses of the Second Amendment were believed to be mutually exclusive such that the National Rifle Association (NRA) and other gun rights

¹⁰⁵ Ibid., 31.

¹⁰⁶ Ibid., 32.

¹⁰⁷ Ibid., 31.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid., 32.

¹¹⁰ Ibid., 438.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid., 439.

advocates focused on the second clause to the exclusion of the first clause.¹¹⁵ This became known as the individual rights approach, or states' rights theory.¹¹⁶ According to Professor Akhill Reed Amar, the reason the Second Amendment appears to have two main clauses with different subject-nouns is because in 1789, "the militia was the people and the people were the militia."¹¹⁷

Professor Baron explains that the Amendment's second clause functions as a subordinate adverbial that establishes a "cause-and-effect relationship, that the right to bear arms was tied to the framers directly to the need for a well-regulated militia."¹¹⁸ Therefore the idea expressed by the Second Amendment should be: "Because a well-regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."¹¹⁹

The second subject-noun in the Second Amendment, "people," refers back to the first subject-noun, "militia" indicating that the words "people" and "militia" were synonymous.¹²⁰ The militia is a subgroup within the people.¹²¹ "All people, of all ages and mental capacity, were not considered part of the militia. Thus, the Second Amendment could not simply provide that all people have the right to keep and bear arms. Instead, the people over eighteen, also known as the militia, have the right

¹¹⁵ Ibid., 440.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Occhipinti (2017), 440-1.

¹¹⁹ Ibid., 441.

¹²⁰ Ibid.

¹²¹ Ibid.

to keep and bear arms because an armed populace is necessary to the safety and security of a free state.”¹²² According to Ingram and Ray, the evidence that the Framers had no intention of creating an individual right to bear arms is the fact the Framers choose the word “bear” in wording the Second Amendment.¹²³ The use of the word “bear” connotes carrying arms for military purposes.¹²⁴ When a person or unorganized group carries weapons, we do not speak or think of that as “bearing arms.”¹²⁵ This was as true 200 years ago as it is today.¹²⁶ While the Third Amendment keeps soldiers out of homes it is historically linked to the Second Amendment.¹²⁷ They were placed next to each other as both were intended as checks on the central government and militaristic tyranny.¹²⁸ However, Ingram and Ray state that the Second and Third Amendments were responses to concerns at that time, and therefore are holdovers today.¹²⁹

Halbrook claims there is a “hidden history of the Second Amendment.”¹³⁰ During the debates over ratification of the Constitution it became clear that there was justifiable concern over the lack of express protection in the Constitution for certain rights.¹³¹ The colonists felt certain rights were inherent in a free society as the

¹²² Ibid., 442.

¹²³ Ingram and Ray (1997), 499.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Kopel (1998), 1403.

¹²⁸ Ibid., 1402.

¹²⁹ Ingram and Ray (1997), 499.

¹³⁰ Halbrook (1991), 131.

¹³¹ Ingram and Ray (1997), 499.

Revolution was caused by British denial and infringement of rights.¹³² Therefore proponents of ratification adopted a Bill of Rights.¹³³ During the ratification period between 1787-1791, Congress and the states considered two separate groups of amendments to the Constitution.¹³⁴ The first group was a declaration of rights containing the right of the people to keep and bear arms.¹³⁵ The second group, containing amendments related to the structure of government also included recognition of the power of states to maintain militias.¹³⁶ It should be noted that the state power to maintain militias by way of the federal military power (Article I, Section 8) was already in the text of the Constitution before the Bill of Rights was proposed.¹³⁷ Furthermore, there were several proposed amendments which would have prohibited the federal government from interfering with the bearing of arms by individual citizens, and none of these proposals were adopted.¹³⁸ The Constitutional Convention records do not indicate there was ever any discussion of an individual right to bear arms, or any fear of oppression by state governments.¹³⁹ Actually states were looked to for protection of individual liberties and protection from oppression by the new national government.¹⁴⁰

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Halbrook (1991), 131.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid., 132.

¹³⁸ Ingram and Ray (1997), 499.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

The distinction between the militia and the army is clearly made in the Constitution.¹⁴¹ The regular army is under the control of the federal government while the militia is under the control of the states.¹⁴² It is possible that the term “militia” is not defined in the Constitution nor the Second Amendment due to its widespread understanding at the time the Constitution was drafted.¹⁴³ There was never a standing army prior to the 1760’s when King George III sent British troops to the American colonies.¹⁴⁴ Prior to British troops arriving, each American colony had a militia that was modeled on the British system.¹⁴⁵ In general, all men over eighteen were subject to service and they were required to provide their own arms and equipment.¹⁴⁶ There was no need for a standing army because the citizens were armed and prepared and always on call.¹⁴⁷

The idea of a militia was not new when the Bill of Rights was submitted for ratification in 1789.¹⁴⁸ The Colonists had brought the militia system to the United States that was indigenous to the country of their origin.¹⁴⁹ Community policing was a responsibility taken on by every citizen in the community¹⁵⁰ But between the Stamp Act in 1765 to the outbreak of war in 1775, the British had full-time professional troops in

¹⁴¹ Occhipinti (2017), 443.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ingram and Ray (1997), 497.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Occhipinti (2017), 443.

¹⁴⁹ Ansell (1917), 472.

¹⁵⁰ Occhipinti (2017), 443-4.

America and made attempts to disarm the colonists.¹⁵¹ In 1775 the British attempted to seize stores of weapons and ammunition in Williamsburg, Virginia; Salem, Massachusetts; and Concord, Massachusetts.¹⁵² This ultimately led to the battles of Lexington and Concord, and then the Revolutionary War.¹⁵³

The militia “is an Anglo-Saxon institution.”¹⁵⁴ In Saxon times the militia was composed of “all subjects and citizens capable of bearing arms, regardless of age or parental authority.”¹⁵⁵ A fundamental principle of Anglo-Saxon government required every citizen capable of bearing arms the duty of personal service to protect and defend the government in time of need, and in return receive liberty and protection.¹⁵⁶ When the Anglo-Saxons ruled England, all able-bodied men over the age of fifteen, collectively known as the *posse comitatus*, were required to own weapons so they could respond to the “hue and cry.”¹⁵⁷ Every subject capable of bearing arms was “compelled to furnish himself with arms and present himself prepared for the maintenance of the king’s peace.”¹⁵⁸ The *posse comitatus* was required to use their own weapons because the government did not provide weapons for their soldiers, and it was expected that they come prepared with their own weapons from home.¹⁵⁹ King Alfred created the English militia which “consisted of all armed people.”¹⁶⁰ A century later the Statute of Wynton

¹⁵¹ Ingram and Ray (1997), 497.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ansell (1917), 471.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid., 472.

¹⁵⁷ Occhipinti (2017), 444.

¹⁵⁸ Ansell (1917), 473.

¹⁵⁹ Occhipinti (2017), 444.

¹⁶⁰ Ibid.

required every man between fifteen and sixty be “assessed and sworn to keep armor for the protection of his lands and goods.”¹⁶¹ The obligation was primarily imposed upon those between the ages of sixteen and sixty years old.¹⁶² In 1939, the Supreme Court unanimously recognized King Alfred’s militia as the militia of the Second Amendment.¹⁶³ Accordingly, “[n]o other American institution bears a closer resemblance to its ancient ancestor than our militia.”¹⁶⁴

According to Ingram and Ray, “American rights, privileges, and duties with regard to keeping and bearing arms are derived from the United States’ common law heritage which was inherited and adopted by the American colonies, the states, and the United States.”¹⁶⁵ Today, modern discussions on gun rights and gun control focus on constitutional law and ignores the common law.¹⁶⁶ The words “right to keep and bear arms” were first used by John Adams.¹⁶⁷ Available evidence from the time of the adoption of the Second Amendment indicates most of the people believed the right to keep and bear arms to be a natural right and not a collective right.¹⁶⁸ This position was supported by commentary and court decisions following the passage of the Bill of Rights.¹⁶⁹

¹⁶¹ Ansell (1917), 473-4.

¹⁶² Ibid., 473.

¹⁶³ Occhipinti (2017), 444.

¹⁶⁴ Ansell (1917), 474.

¹⁶⁵ Ingram and Ray (1997), 494.

¹⁶⁶ Cornell (2005), 1127.

¹⁶⁷ Stein et al. (2016), 40.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

English rules of legal interpretation were based on five signs: “the words, the context, the subject-matter, the effects and consequences, or the spirit and reason of the law.”¹⁷⁰ Alexander Hamilton stated that the “rules of legal interpretation are rules of *common sense*, adopted in the construction of the laws.”¹⁷¹ Hamilton further explained that when one seeks to understand the meaning of a text, the first place one should look is “the instrument itself, according to the usual and established rules of construction.”¹⁷²

Punctuation in the eighteenth century was “prolific, superfluous, and often chaotic.”¹⁷³ For instance. Commas were used as oratory marks, where pauses should be taken or where the reader should breathe, and to signal syntactic breaks.¹⁷⁴ While not proper today, it was common for the drafters of the Constitution to include a comma before the word “shall” unless intentionally creating a restrictive clause.¹⁷⁵

Brittany Occhipinti reanalyzed the Second Amendment using historical and linguistic approaches to unifying the two clauses.¹⁷⁶ Accordingly, there have been significant changes in the English language making the intended meaning of the words in the Second Amendment difficult to understand.”¹⁷⁷ Occhipinti cites Professor Philip Bobbitt who identified six main theories of constitutional interpretation: textual,

¹⁷⁰ Occhipinti (2017), 437.

¹⁷¹ Ibid.

¹⁷² Ibid., 437-8.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Occhipinti (2017), 432.

¹⁷⁷ Ibid.

structural, historical, doctrinal, prudential, and ethical.¹⁷⁸ The originalist approaches constitutional interpretation with one question: “what did the people think it meant when they adopted it?”¹⁷⁹ Accordingly, “originalism is the most comprehensive analysis that can be used to determine the original intent of the drafters and ratifiers”¹⁸⁰ The predominant originalist theory today is original public meaning.¹⁸¹ In contrast to original intent, original public meaning interpret the Constitution according to how the words of the document would have been understood by at the time the Constitution was ratified¹⁸² For originalists, Tucker’s *Blackstone* is important as it drew on his own law lectures which were composed around the same time period as the framing and adoption of the Second Amendment.¹⁸³ On the other hand, Cornell cites several problems using original public meaning as a method.¹⁸⁴ First, Cornell states “it is inconsistent with the dominant modes of constitutional interpretation familiar to the Founders” and second, “the new method lacks any clear rules or methodology.”¹⁸⁵

The wording of the Second Amendment further complicates its understanding. The term “militia” which precedes the guarantee belonging to the “people” indicates the Amendment protects the power of the state to maintain a militia.¹⁸⁶ Supporters of this hypothesis oppose firearms ownership by individuals.¹⁸⁷

¹⁷⁸ Ibid., 433.

¹⁷⁹ Ibid., 434.

¹⁸⁰ Ibid.

¹⁸¹ Cramer et al. (2010), 824.

¹⁸² Ibid.

¹⁸³ Cornell (2005), 1125.

¹⁸⁴ Ibid., 1544.

¹⁸⁵ Ibid.

¹⁸⁶ Halbrook (1991), 131.

¹⁸⁷ Ibid.

Please note that the following passages were heavily quoted from the source material as this was the language used in the eighteenth and nineteenth centuries.

James Madison, father of the Bill of Rights, originally proposed seventeen amendments, in which the House approved all seventeen.¹⁸⁸ In a 1789 speech to the House, Madison argued that restrictions on the state power were “of equal, if not greater, importance than those already made” in the body of the Constitution.¹⁸⁹ He said there was “more danger of those powers being abused by state governments than by the government of the United States.”¹⁹⁰ In other words, it was equally necessary to secure rights against State governments.¹⁹¹

The Federalist Papers mentions the rights of individuals to bear arms in *Federalist 28, 29 and 46*. Hamilton writes in *Federalist 28* “[t]he means to be employed must be proportioned to the extent of the mischief. If it should be a slight commotion in a small part of a State, the militia of the residue would be adequate to its suppression....”¹⁹² An insurrection, whatever may be its immediate cause, eventually endangers all government. Regard to the public peace, if not to the rights of the Union, would engage the citizens to whom the contagion had not communicated itself to oppose the insurgents....”¹⁹³ Hamilton provides an analogy in *Federalist 28* saying, “the people having no district government in each, can take no regular measures for defense

¹⁸⁸ Brennan (1977), 503.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid., 504.

¹⁹¹ Ibid.

¹⁹² *Federalist 28*, 174.

¹⁹³ Ibid.

against an [sic] supreme power usurper”¹⁹⁴ “The citizens must rush tumultuously to arms, without concert, without system, without resource; except in their courage and despair.”¹⁹⁵ He goes on to state, “the obstacles to usurpation and the facilities of resistance increase with the increased extent of the state, provided the citizens understand their rights and are disposed to defend them.”¹⁹⁶ In *Federalist 29* Hamilton discusses the power of regulating and commanding the militia. Hamilton goes on to state, “[l]ittle more can reasonably be aimed at with respect to the people at large than to have them properly armed and equipped; and in order to see that this be not neglected, it will be necessary to assemble them once or twice in the course of a year.”¹⁹⁷ Furthermore, “...if circumstances should at any time oblige the government to form an army of any magnitude that army can never be formidable to the liberties of the people while there is a large body of citizens, little if at all inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow-citizens.”¹⁹⁸

In *Federalist 46*, Madison states: “Let a regular army, fully equal to the resources of the country, be formed; and let it be entirely at the devotion of the federal government: still it would not be going too far to say that the State governments with the people on their side would be able to repel the danger. The highest number to which, according to the best computation, a standing army can be carried in any country

¹⁹⁴ Ibid., 176.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid, 174.

¹⁹⁷ *Federalist 29*, 180-1.

¹⁹⁸ Ibid, 181.

does not exceed one hundredth part of the whole number of souls; or one twenty-fifth part of the number able to bear arms.”¹⁹⁹ *Federalist 46* goes on to state, “[t]o a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties and united and conducted by governments possessing their affections and confidence. It may well be doubted whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops.”²⁰⁰

Federalist 46 also mentions that European kingdoms are afraid to trust the people with arms.²⁰¹ “Let us not insult the free and gallant citizens of America with the suspicion that they would be less able to defend the rights of which they would be in actual possession than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors.”²⁰² Madison states in *Federalist 46* the federal and state governments are “different agents and trustees of the people,” each with different powers and different purposes.²⁰³ The ultimate authority resides in the people alone and is not dependent on ambitions of different governments that are only interested in expanding their power and reach at the expense of the other.²⁰⁴ The people will have a natural attachment to their respective States.²⁰⁵ It will be unlikely that members of State legislatures will consider national issues just as it will be unlikely the members of the federal legislature will fully consider local issues.²⁰⁶

¹⁹⁹ *Federalist 46*, 295-6.

²⁰⁰ *Ibid.*, 296.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*, 291.

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*, 293.

Richard Henry Lee writes in *Letters from the Federal Farmer* 53 that “to preserve liberty, it is essential that the whole body of people always possess arms, and be taught alike, especially when young, how to use them.”²⁰⁷ To Richard Henry Lee, a “well regulated” militia was the armed populace rather than a select group when properly formed.²⁰⁸ In fact, Richard Henry Lee wrote that the people, when formed as a militia, would render a regular army unnecessary.²⁰⁹

In explaining the unamended Constitution Federalist Tench Coxe wrote in the February 20, 1788 edition of the *Pennsylvania Gazette*: “The unlimited power of the sword is not in the hands of either the federal or state governments, but, where I trust in God it will ever remain, in the hands of the people.”²¹⁰ Coxe confirmed a year later in the course of endorsing the proposed Bill of Rights that the Second Amendment was designed not to protect the nation, the states, or the federal government, but to protect the people.²¹¹

According to Kopel people who “believe the Second Amendment guarantees a right of individual Americans to own and carry guns claim the original intent of the Second Amendment was for an individual right” [written prior to *Heller*].²¹² On the other hand, those “who believe the Second Amendment only guarantees the right of state governments to have National Guard (militia) units argue that the original intent

²⁰⁷ Lee (1788), 170 and Halbrook (1982), 21.

²⁰⁸ Halbrook (1982) 20-1.

²⁰⁹ *Ibid.*, 21.

²¹⁰ Halbrook (1991), 146.

²¹¹ Halbrook & Kopel (1998), 363.

²¹² Kopel (1998), 1362.

supports their own position.”²¹³ While both sides of this debate cite material from the time period when the Constitution and Bill of Rights were ratified, as well as English legal history, neither has paid attention to the “interpretive community which first applied the Second Amendment: the United States in the nineteenth century.”²¹⁴ During the nineteenth century the Second Amendment’s right to bear arms was discussed in legal treatise, Congressional debates, six Supreme Court cases, numerous state court cases, as well as other legal materials.²¹⁵

By reviewing what the nineteenth century had to say about the Second Amendment, prior to 1871 and the establishment of the National Rifle Association (NRA), it is possible to resolve whether the Second Amendment has historically been considered to protect an individual right.²¹⁶ Additionally, this can provide guidance about what types of gun control are constitutionally permissible.²¹⁷ The first scholarly analysis was published in 1803 in St. George Tucker’s American edition of Blackstone’s *Commentaries*.²¹⁸

Tucker commented in the second volume of *American Blackstone* on the English Bill of Rights which provided: “That the subjects which are protestants, may have arms for their defense suitable to their conditions, and as allowed by law.”²¹⁹ Tucker added his own analysis and commented on this in two footnotes:

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid., 1369.

²¹⁷ Ibid., 1367.

²¹⁸ Ibid., 1372.

²¹⁹ Ibid., 1374-5.

[fn40] The right of the people to keep and bear arms shall not be infringed.

Amendment to C. U. S. Art. 4, and this without any qualification as to their condition or degree, as is the case in the British government.

[fn41] Whoever examines the forest, and game laws in the British code, will readily perceive that the right of keeping arms is effectually taken away from the people of England. The commentator himself informs us, Vol. II, p. 412, “that the prevention of popular insurrections and resistance to government by disarming the bulk of the people, is a reason oftener meant than avowed by the makers of the forest and game laws.”²²⁰

Tucker noted the difference between the American right to bear arms and its British decedent by noting the American right did not have the limitations contained in the British right.²²¹ Tucker further devoted extensive commentary on the Second Amendment in the constitutional appendix:

This may be considered as the true palladium of liberty The right of self defence [*sic*] is the first law of nature: in most governments it has been the study of rulers to confine this right within the narrowest limits possible. Wherever standing armies are kept up, and the right of the people to keep and bear arms is, under any colour [*sic*] or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction. In England, the people have been disarmed, generally, under the specious pretext of preserving the game: a never-

²²⁰ Ibid.

²²¹ Ibid.

failing lure to bring over the landed aristocracy to support any measure, under that mask, though calculated for very different purposes. True it is, their bill of rights seems at first view to counteract this policy: but the right of bearing arms is confined to protestants, and the words suitable to their condition and degree, have been interpreted to authorise [*sic*] the prohibition of keeping a gun or other engine for the destruction of game, to any farmer or inferior tradesman, or other person not qualified to kill game. So that not one man in five hundred can keep a gun in his house without being subject to penalty.²²²

Tucker proclaims the Second Amendment upholds an individual right (for liberty).²²³ Tucker further argued Congress could not disarm “any person” because disarmament could never be “necessary and proper.”²²⁴ According to Kopel Tucker appears in articles discussing the Standard Model while anti-individual writers fail to address the meaning of “the most important law book of the early Republic.”²²⁵ Tucker’s interpretation of the Second Amendment presents a right that is “individual, not a state’s right; it belongs to everyone, not just militia members; its purpose include defense against tyranny and hunting.”²²⁶ It may be of interest to note that when Blackstone was printed in 1803 none of the Constitutional framers came forward to correct Tucker’s interpretation of the Second Amendment.²²⁷

²²² Ibid., 1379.

²²³ Ibid.

²²⁴ Ibid., 1379-80

²²⁵ Ibid., 1380.

²²⁶ Ibid.

²²⁷ Ibid.

Following Tucker's *Blackstone* as the leading American constitutional treatise was William Rawle's, *A View of the Constitution of the United States of America* in 1825. Rawle was a distinguished attorney and was elected to the Pennsylvania legislature in 1789. He was appointed United States Attorney for Pennsylvania by George Washington. He held the post from 1792 to 1800.²²⁸ In *A View to the Constitution* Rawle describes the Second Amendment:

In the second article, it is declared, *that a well regulated militia is necessary to the security of a free state*; a proposition from which few will dissent. Although in actual war, the services of regular troops are confessedly more valuable; yet, while peace prevails, and in the commencement of a war before a regular force can be raised, the militia form the palladium of the country. They are ready to repel invasion, to suppress insurrection, and preserve the good order and peace of government. That they should be well regulated, is judiciously added. A disorderly militia is disgraceful to itself, and dangerous not to the enemy, but to its own country. The duty of the state government is, to adopt such regulation as will tend to make good soldiers with the least interruption of the ordinary and useful occupations of civil life. In this all the Union has a strong and visible interest.

The corollary, from the first position, is, that *the right of the people to keep and bear arms shall not be infringed*.

²²⁸ Ibid., 1387.

The prohibition is general. No clause in the Constitution could by any rule of construction be conceived to give to congress a power to disarm the people. Such a flagitious attempt could only be made under some general pretense by a state legislature. But if by any blind pursuit of inordinate power, either should attempt it, this amendment may be appealed to as a restraint on both.²²⁹

Rawle considered the Second Amendment a limit of state and federal disarmament of the people.²³⁰ Putting the Second Amendment aside, Rawle believed Congress would have no power to disarm the people one hundred and fifty years before the Congressional power “to regulate commerce...among the several States” was construed as a power to ban the intrastate possession of firearms.²³¹

The 1833 treatise *Commentaries on the Constitution of the United States* by dominant pre-Civil War American legal figure Joseph Story was written while he was teaching at the Harvard Law School.²³² Story was appointed to the Supreme Court by President Madison in 1811 at age 32 – the youngest man ever nominated.²³³ Story’s commentary on the Second Amendment was later quoted in many Standard Model law review articles²³⁴ The following quote appeared in Sanford Levinson’s 1989 article *The Embarrassing Second Amendment*:

The right of the citizens to keep and bear arms has justly been considered as the palladium of the liberties of a republic; since it offers a strong moral check

²²⁹ Ibid.

²³⁰ Ibid., 1390.

²³¹ Ibid.

²³² Ibid., 1391.

²³³ Ibid.

²³⁴ Ibid.

against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.²³⁵

According to Story the right to bear arms belongs to “the citizens” and not to state governments, and the purpose of this right is to deter tyranny.²³⁶

The Second Amendment material in Story’s 1840 constitutional law book, *Familiar Exposition of the Constitution of the United States*, contains material not found in the commentaries.²³⁷ The following statement by Story shows that he saw the Second Amendment as an individual right:

The next amendment is, “A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.” One of the ordinary methods, by which tyrants accomplish their purposes without resistance, is, by disarming the people, and making it an offense to keep arms, and by substituting a regular army in the stead of a resort to the militia. The friends of a free government cannot be too watchful, to overcome the dangerous tendency of the public mind to sacrifice, for the sake of mere private convenience, this powerful check upon the designs of ambitious men.

... The militia is the natural defence [sic] of a free country against sudden foreign invasions, domestic insurrections, and domestic usurpations of power by rulers.

²³⁵ Ibid.

²³⁶ Ibid., 1392.

²³⁷ Ibid., 1395.

It is against sound policy for a free people to keep up large military establishments and standing armies in time of peace, both from the enormous expenses, with which they are attended, and the facile means, which they afford to ambitious and unprincipled rulers, to subvert the government, or trample upon the rights of the people. The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and it will generally, even if these are successful in the first instance, enable the people to resist and triumph over them. ... How it is practicable to keep the people duly armed without some organization, it is difficult to see. There is certainly no small danger, that indifference may lead to disgust, and disgust to contempt; and thus, gradually undermine all the protection intended by this clause of our National Bill of Rights.²³⁸

Justice Story was also quoted by an 1871 Tennessee Supreme Court opinion that the Second Amendment, “in order to secure a militia, guarantees a general right of individuals to have weapons.”²³⁹

Violent resistance to tyranny was not an abstract notion to Story as his father was one of the Indians in the Boston Tea Party.²⁴⁰ “The notion that the American people could be trusted both to suppress illegitimate insurrections *and* to overthrow tyranny

²³⁸ Ibid., 1396.

²³⁹ Ibid., 1394.

²⁴⁰ Ibid., 1397.

may seem self-contradictory to late twentieth-century American lobbyists. But it was an obvious truth to Justice Story.”²⁴¹

Jurist St. George Tucker, in his 1803 edition of Blackstone’s *Commentaries*, stated: “In America we may reasonably hope that the people will never cease to regard the right of keeping and bearing arms as the surest pledge of their liberty.”²⁴²

Furthermore, Tucker stated the following: “The right of the people to keep and bear arms shall not be infringed. Amendments to C.U.S. Art. 4, and this without any qualification as to their condition or degree, as is the case in the British government.”²⁴³

Tucker stated that the Second Amendment was “the true palladium of liberty.”²⁴⁴ Gun rights advocates use Tucker’s comments as proof that the right to bear arms was originally understood to protect an individual right.²⁴⁵ However, Saul Cornell, Professor of History at Ohio State University, states: “This claim rests on a serious misreading of Tucker’s constitutional writings.”²⁴⁶ Cornell goes on to say that Tucker and his view of the Second Amendment was “a product of the struggles of his own day, not the modern debate between gun rights and gun control.”²⁴⁷

Accordingly, to understand what Tucker meant by the phrase “the true palladium of liberty” it will be necessary to pay attention to the political context in which he wrote and the role that the right to keep and bear arms played in his

²⁴¹ Ibid.

²⁴² Notarangelo (2016), 223.

²⁴³ Halbrook (2007), 131.

²⁴⁴ Blackstone (1803). 300.

²⁴⁵ Cornell (2005), 1123.

²⁴⁶ Ibid.

²⁴⁷ Ibid., 1124.

constitutional theory.²⁴⁸ Tucker's understanding of the role of the right to bear arms in American constitutionalism evolved.²⁴⁹ Tucker gave additional attention to the role of the Second Amendment as a civic right in which "the right to bear arms in a well-regulated militia was a judicially enforceable privilege and immunity of federal citizenship."²⁵⁰

Cornell states that "[g]un-rights advocates claim Tucker as their spiritual forebear..."²⁵¹ For instance, David Hardy, in his essay on Tucker's lectures, claims that Tucker believed that the Second Amendment "enshrined a private right of individual self-defense in the Constitution."²⁵² Justice Scalia affirmed this individual-rights view in his majority opinion in *Heller*.²⁵³ On the other hand, Cornell states "[i]t is clear that Tucker believed that the intent of the First Congress in adopting the Second Amendment was to deal with the danger posed by Article I, Section 8, of the Constitution."²⁵⁴

Tucker's book was followed by William Rawle's, *A View of the Constitution of the United States of America* (1825) which states the Second Amendment's "prohibition" is general. No clause in the Constitution could by any rule of construction be conceived to give to Congress a power to disarm the People."²⁵⁵ Joseph Story echoed Rawle in his *Commentaries on the Constitution of the United States* (1833) in affirming that "[t]he

²⁴⁸ Ibid.

²⁴⁹ Ibid., 1125.

²⁵⁰ Ibid.

²⁵¹ Cornell (2009), 1541.

²⁵² Ibid.

²⁵³ Ibid., 1541-2.

²⁵⁴ Ibid., 1546.

²⁵⁵ Rawle (1829), 125.

right of the citizen to keep and bear arms has justly been considered as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance enable the people to resist, and triumph over them.”²⁵⁶ In other words, to Story, the amendment offered “a strong moral check against the usurpation and arbitrary power of rulers.”²⁵⁷

Henry St. George Tucker, son of St. George Tucker, served as U.S. Representative from Virginia (1815-1819), as President of the Virginia Supreme Court, and as law professor at the University of Virginia (1841 – 1845).²⁵⁸ The younger Tucker wrote a three-volume treatise titled *Commentaries on the Law of Virginia* in 1831.²⁵⁹ His treatise was “the primary reference source for the bar of Virginia” until 1850 when the Virginia Code was adopted. Furthermore, Tucker the younger’s work “established the standard for American treatise writing, helped organize American law and provided access to it for attorneys distant from law libraries.”²⁶⁰ When explaining “the principle absolute rights of individuals,” Tucker wrote the following about the Second Amendment:

[C]ertain protections or barriers have been erected which serve to maintain the three primary rights of personal security, personal liberty, and private property. These may in America may be said to be:

1. The Bill of Rights and written Constitution’s....

²⁵⁶ Story (1833), 708.

²⁵⁷ Ibid., 708.

²⁵⁸ Ibid., 1399.

²⁵⁹ Ibid., 1400.

²⁶⁰ Ibid.

2. The right of bearing arms – which with us is not limited and restrained by an arbitrary system of game laws, as in England; but is practically enjoyed by every citizen, and is among his most valuable privileges, since it furnishes the means of resisting, as a freeman ought, the inroads of usurpation.

3. The right of applying to the courts of justice for redress of injuries.²⁶¹

Tucker added that this right “is secured with us by Am. C. U. S. art. 4” (Tucker numbered the amendments as they were when sent to the states for ratification by the first Congress).²⁶²

When human rights were violated, Tucker wrote, the citizen was entitled to justice in the courts, “next to the right of petitioning for redress of grievances; and, lastly, to the right of having and using arms for self-preservation and defence [*sic*].”²⁶³ While Tucker described these rights as “our birthright to enjoy entire,” they could be subject to “necessary restraints” which were “gentle and moderate.”²⁶⁴ Determining what kinds of regulations are consistent with the individual right to keep and bear arms is difficult.²⁶⁵

Still other nineteenth century commentary can be found in Benjamin L. Oliver’s 1832 *The Rights of an American Citizen* which had a chapter titled “Of the rights reserved to the people of the United States; not being granted either to the general government, or the state governments.”²⁶⁶ In this chapter Oliver wrote of the Second

²⁶¹ Ibid.

²⁶² Ibid., 1401.

²⁶³ Ibid., 1400.

²⁶⁴ Ibid., 1401.

²⁶⁵ Ruben et al. (2018), 1435.

²⁶⁶ Kopel (1998), 1401.

Amendment: “right of the citizens to bear arms as making it possible for a militia to combat invasion, insurrection, or usurpation.”²⁶⁷ On being armed, Oliver wrote “[t]here are without doubt circumstances, which may justify a man for going armed; as, if he has valuable property in his custody; or, if he is traveling in a dangerous part of the country; or, his life has been threatened.”²⁶⁸

A Brief Exposition of the Constitution of the United States by James Bayard, and praised by Chief Justice John Marshall and Justice Joseph Story, was intended as a text book that was adopted by some colleges and seminaries.²⁶⁹ Bayard wrote that the Second Amendment “scares the right of the people to provide for their own defence” [sic].²⁷⁰

Even Webster’s 1828 two-volume *American Dictionary of the English Language* examined the Second Amendment word-by-word which provide the meaning of the Second Amendment’s meaning in nineteenth century America.²⁷¹ As this body of work deals with the rights of individuals only the second half of the Second Amendment will be examined according to Webster’s 1828 dictionary ...the right of the people to keep and bear Arms, shall not be infringed is defined as follows:

“Right” was a “[j]ust claim; immunity; privilege. All men have a *right* to secure enjoyment of life, liberty, personal safety, and property.... *Rights* are natural, civil, political, religious, personal, and public

²⁶⁷ Ibid.

²⁶⁸ Ibid., 1402.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Ibid., 1407.

“People” meant “[t]he body, of persons who compose a community, town or nation (e.g. We say, the *people* of a town)”

“Keep” was “[t]o hold; to retain in one’s power or possession”

“Bear” meant firstly, “[t]o support, to sustain; as, to *bear* a weight or burden,” however, this meaning does not fit the context of the Second Amendment. The context of the second and third meanings of “bear” conform much better: “To carry; to convey; to support and remove from place to place” and “[t]o wear; to bear as a mark of authority or distinction; as, to *bear* a sword, a badge, a name; to bear arms in a coat.”²⁷²

While the right to “bear” arms admittedly has a military connotation as if to “bear” arms in militia service none of Webster’s definitions for “bear” indicate such a meaning.²⁷³ “Bear” was used in a key document that gave birth to the Second Amendment: the minority report from the Pennsylvania ratifying convention.²⁷⁴ It was here the minority demanded constitutional protection for the right of the people “to bear arms for the defense of themselves and their own state, or the United States, or for the purpose of killing game.”²⁷⁵ Additionally, the state constitutions of Missouri (1820), Indiana (1816), Ohio (1802), Kentucky (1792), and Pennsylvania (1776) all recognized a right of citizens to “bear arms” in the “defense of themselves and the state.”²⁷⁶ Without a doubt bearing arms for “the state” would be in the context of being

²⁷² Ibid., 1408-9

²⁷³ Ibid., 1409.

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Ibid.

in a militia, citizens bearing arms for “defense of themselves” would constitute defending themselves against criminal attack.²⁷⁷ It is here that the phrase “bear arms” does not mean that arms-bearing only applies while in active militia service.²⁷⁸

A review of the literature indicates that the Second Amendment was understood to mean an individual right in the nineteenth century. In 1880, Thomas Cooley wrote in his *General Principals of Constitutional Law*: “It may be supposed from the phraseology of this provision that the right to keep and bear arms was only guaranteed to the militia. But this would be an interpretation not warranted by the intent.”²⁷⁹ Cooley goes on to state: “The meaning of the provision undoubtedly is, that the people, from whom the militia must be taken, shall have the right to keep and bear arms, and they need no permission or regulation of law for the purpose.”²⁸⁰ This means the right is general.²⁸¹

Even a 1982 Senate report on the meaning of the Second Amendment concluded: it is “inescapable that the history, concept, and wording of the second amendment to the Constitution of the United States, as well as its interpretation by every major commentator and court in the first half-century after its ratification, indicates that what is protected is an individual right of a private citizen to own and carry firearms in a peaceful manner.”²⁸²

It is inescapable that language has changed dramatically from the nations founding to modern times. It stands to reason that punctuation rules have also changed.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Cooley (1880), 271.

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² Wilbanks (1982), 17.

Occhipinti makes a case that language has changed to the point where reading the Constitution using our rules for grammar imparts a different meaning to the Constitution, chiefly the Second Amendment. It should be noted that Occhipinti takes her work from a lecture given by another professor. While there may be some truth and legitimacy to Occhipinti's study it should be taken as a possible theory and deserves more research. It is mentioned here as it is plausible and not entirely improbable that this may be the case. Anyone who has read the *Federalist Papers* should be able to sympathize. However, the writings from the eighteenth and nineteenth century may carry more weight as both the founders and many of the scholars, especially from the early eighteenth century, were living during the time the Constitution and Bill of Rights were ratified. While the founding fathers did not endorse these comments or writings, they did not indicate their disagreement with anything written either.

Leading Second Amendment Court Cases

To date the Supreme Court has not ruled over a Second Amendment case about "assault weapons." Nor has the Court ruled definitively over exactly how the Second Amendment should be interpreted – i.e. is it an individual right, collective right or hybrid of the two? However, there have been several Supreme Court cases as well as state Supreme Court cases that addressed Second Amendment issues. Collectively these cases may lead to answer whether the Second Amendment is an individual right or not.

Dred Scott v. Sanford is not ordinarily thought about when studying the meaning of the Second Amendment. Yet, the majority opinion by Chief Justice Taney references firearm ownership rights. This may yield a common view at the time for firearm

ownership. In his majority opinion in *Dred Scott v. Sanford*, Justice Roger B. Taney appears to have assumed that citizens were able to carry firearms and then used that idea as a reason why blacks should never be given citizenship. Taney wrote blacks would become “entitled to all the rights, and privileges, and immunities guaranteed by that instrument to the citizen.”²⁸³ In other words, this would “give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public office meetings upon political affairs, and keep and carry arms wherever they want.”²⁸⁴ It is here that Taney’s language coincides with the language of the Second Amendment. When he says “keep and carry arms...” is similar to “keep and bear arms” in the Second Amendment.

The Supreme Court held in *Dred Scott* that constitutional rights are rights of *citizens* of the United States.²⁸⁵ This makes the *Dred Scott* case about privileges and immunities of citizens.²⁸⁶ As a result it refers to the freedoms granted citizens by the Bill of Rights such as freedom of speech, freedom of the press and the right to bear arms.²⁸⁷ Additionally, John Bingham, who authored Section I of the Fourteenth Amendment, was providing the same rights and freedoms, privileges and immunities to blacks.²⁸⁸

In 1859 the Texas Supreme Court ruled in *Cockrum v. State* that both the Second Amendment and its equivalent in the state constitution protected an “absolute” right to

²⁸³ Taney (1857), 485.

²⁸⁴ *Scott v. Sanford*, 23.

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*, 435.

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*, 435 and 438.

keep and bear arms.²⁸⁹ The court used an example of a poor citizen to be in possession of a butcher's knife would be equivalent to removing one's right to bear arms because they may not have money to purchase a firearm. The Texas Supreme Court further stated: "The right to keep and bear, implies the right, or a proper emergency, to use."²⁹⁰ The court determined: "A law cannot be passed to infringe upon or impair it because it is above the law, and independent of the law-making power."²⁹¹

However, in 1875 the United States Supreme Court stated in *United States v. Cruikshank*, "that an individual right to bear arms for a lawful purpose is not granted by the Constitution, and the existence of such a right is not in any way dependent on the Constitution for its existence."²⁹² Furthermore, the court stated "the Second Amendment restricts only action by the federal government, and has no effect by state governments or private individuals."²⁹³

Despite the Supreme Court not definitively deciding whether the Second Amendment is an individual right, collective right or a hybrid of both, there have been several cases relating to Second Amendment as a collective right. An exception to this collective right was *Young v. State of Hawaii* which acknowledged that the concealed carry of a firearm falls outside the protections of the Second Amendment (per *Peruta v. County of San Diego*, 824 F.3d919).²⁹⁴ The *Young* case does indicate the Second

²⁸⁹ Roberts. "John Cockrum v. The State." John Cockrum v. The State. Accessed September 12, 2019. <https://www.constitution.org/21/2ndcourt/state/177st.htm>.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Ingram and Ray (1997), 499.

²⁹³ Ibid., 500.

²⁹⁴ *Young v. State of Hawaii*, <https://law.justia.com/cases/federal/appellate-courts/ca9/12-17808/12-17808-2018-07-24.html>, 3-4.

Amendment encompasses a right to carry a firearm openly in public for self-defense.²⁹⁵

In making their determination the court analyzed the text of the Second Amendment and reviewed the relevant history, including founding-era treaties and nineteenth century case law.²⁹⁶ The court also stated, “once identified as an individual right focused on self-defense, the right to bear arms must guarantee *some* right to self-defense in public.”²⁹⁷ The court further concluded “that Hawaii’s limitation on open carry of firearms to those ‘engaged in the protection of life and property’ violated the core of the Second Amendment and was void under any level of scrutiny.”²⁹⁸

Another relevant Supreme Court case was *United States v. Miller* (1939). The defendants were prosecuted under the 1934 National Firearms Act for interstate transportation of a short-barrelled [*sic*] shotgun.²⁹⁹ The Court upheld the indictment of two men who transported an unregistered short-barreled shotgun in interstate commerce. The defendants’ Second Amendment defense was rejected while “the court focused its analysis on the *character* [*italics by author*] of the firearm” as this weapon had no “reasonable relationship to the preservation or efficiency of a well regulated militia....”³⁰⁰ *Miller* gave support to claims that the Second Amendment only protects firearms that “bear some reasonable relationship to a militia, not that the right itself is dependent on service in one.”³⁰¹

²⁹⁵ Ibid., 4.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ *Assault Weapons* (1992), 44.

³⁰⁰ Zuidema (2018), 821.

³⁰¹ Ibid.

The Supreme Court decision in *U.S. v. Miller* (1939) found “In the absence of any evidence tending to show that possession or use of [such a firearm] has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.”³⁰² In other words, “the *Miller* Court implied, though it did not specifically determine, that the Second Amendment provides refuge for the possession of military firearms.”³⁰³ “The *Miller* decision goes to protected possession of arms as it applies to type of firearm.”³⁰⁴

One may ask “how far” Second Amendment rights extend and “to whom” these rights are extended.³⁰⁵ Federal courts have rejected the notion that the Second Amendment grants unlimited rights.³⁰⁶ In *U.S. v. Tot* (1942) the Third Circuit Court of Appeals held that “Weapon bearing was never treated as anything like an absolute right by the common law.”³⁰⁷ Federal courts have interpreted the Second Amendment to protect States rather than individuals.³⁰⁸ Essentially the *Tot* decision maintains that the Second Amendment was to protect the rights of States to maintain a militia and prevent the federal government from interfering; it was not about individual rights.³⁰⁹

In essence *Miller* protected weapons declared, “ordinarily when called for [militia] service [able-bodied] men were expected to appear bearing arms supplied by

³⁰² *Assault Weapons* (1992), 44-5.

³⁰³ *Ibid.*, 45.

³⁰⁴ *Ibid.*

³⁰⁵ *Ibid.*

³⁰⁶ *Ibid.*

³⁰⁷ *Ibid.*

³⁰⁸ *Assault Weapons* (1992), 45.

³⁰⁹ *Ibid.*, 45-6.

themselves and of the kind in common use at the time.”³¹⁰ “Dangerous and unusual” weapons, or weapons typically not possessed by “law-abiding citizens for lawful purposes,” are not protected by the Second Amendment.³¹¹ The Second Amendment does protect “commonly owned firearms used for lawful purposes” including modern firearms.³¹² The Court rejected the argument that only eighteenth-century firearms, such as flintlock muskets, are protected.³¹³ This is analogous to the First Amendment protecting modern forms of speech and the Fourth Amendment being applied to modern forms of search.³¹⁴ In other words, the Second Amendment extends to all “instruments that constitute bearable arms, even those not in existence at the time of the founding.”³¹⁵ It does not extend to weapons considered unusual or weapons that are not used by a militia. In short, the *Miller* decision ruled that the Second Amendment does not protect *all* firearms.³¹⁶

According to Brennan the (United States) Supreme Court expanded federal protections for individual rights during the 1960’s.³¹⁷ The result meant that litigants nor judges needed to base their decisions on state constitutional grounds.³¹⁸ As of the printing of Brennan’s article in 1977, state courts had been analyzing state constitutional counterparts to the provisions of the Bill of Rights thus guaranteeing citizens of their

³¹⁰ Zuidema (2018), 821.

³¹¹ Ibid., 821-2.

³¹² Ibid., 822.

³¹³ Ibid., 821.

³¹⁴ Ibid., 822.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ Brennan (1977), 489.

³¹⁸ Ibid.

state's greater protections than the Bill of Rights.³¹⁹ The drafters of the Bill of Rights drew upon the provisions in various state constitutions before adopting the federal Constitution.³²⁰ "Each of the rights in the federal Constitution had previously been protected in one or more state constitutions."³²¹

Brennan suggests it is to the benefit of state judges and other practitioners to scrutinize decisions by federal courts since they can be "logically persuasive and well-reasoned" with regard to precedent as well as "policies underlying specific constitutional guarantees."³²² This can be persuasive when interpreting state counterparts to the federal Bill of Rights.³²³ A strength of our federal system is that it provides a dual source of protections for the rights of our citizens.³²⁴

By the year 2000, the United States Supreme Court addressed the Second Amendment three times (1876, 1886, and 1939). On each occasion the court held that it granted the people a right to bear arms only within the militia.³²⁵ The Court held that the Amendment referred to the militia defined in Article I, Section 8 of the Constitution: the militia organized by Congress and subject to joint federal and state control. This is referred to as "collective right" model because it holds that the Second Amendment grants the people a "collective right to an armed militia, as opposed to an individual right to keep and bear arms for one's own purpose outside of governmental

³¹⁹ Ibid., 495.

³²⁰ Ibid., 501.

³²¹ Ibid.

³²² Ibid., 502.

³²³ Ibid.

³²⁴ Ibid., 503.

³²⁵ Bogus (2000), 3.

regulation.”³²⁶ The courts relied on the Supreme Courts three opinions on the collective right position when Second Amendment challenges were brought before them due to ordinances or court orders restricting possession of firearms.³²⁷

One of the most well-known Supreme Court decisions regarding the Second Amendment, especially in modern times, is *District of Columbia v. Heller* on June 26, 2008. In Justice Scalia’s majority opinion did the Court recognized for the first time that the Second Amendment guarantees an individual right to keep firearms for self-defense.³²⁸ The basic question in *Heller* was whether the Second Amendment protects and individual right to possess firearms for self-defense or does that right only belong to the militia.³²⁹ The question comes directly from the text of the Second Amendment: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”³³⁰

Furthermore, this right is not connected to service in a militia, and the firearm can be used for lawful purposes, such as self-defense within the home.³³¹ The Amendments first clause states a purpose while the text and history in the second part “suggests an individual right to keep and bear arms.”³³² Part I states the Court’s interpretation is confirmed by similar arms-bearing rights in state constitutions that preceded and immediately followed the Second Amendment.”³³³ The Court’s

³²⁶ Ibid., 3-4.

³²⁷ Ibid., 4.

³²⁸ Ibid.

³²⁹ Ibid., 816.

³³⁰ Ibid.

³³¹ *District of Columbia v. Heller*, 554 US 570 – Supreme Court 2008.

³³² Ibid.

³³³ Ibid.

conclusions of interpretations of the Second Amendment have been supported by scholars, courts and legislators from the time immediately following its ratification through the late nineteenth century.³³⁴ *DC v. Heller* cited *United States v. Miller* (307 U.S. 174. 59 S Ct. 816. 83 L. Ed. 1206) which does not limit the right to keep and bear arms strictly for use in the militia. Instead it limits the type of weapon to which the right applies to those used by the militia (i.e. those in use for lawful purposes).³³⁵

The *Heller* Court concluded the following: (1) the Second Amendment protects an individual right to keep and bear arms for self-defense and is not connected to an individual's service in a militia; (2) the right of law-abiding, responsible citizens to use arms in defense of hearth and home; and (3) the type of firearm in *Heller*, a handgun, is "the quintessential self-defense weapon," and the (unconstitutional) D.C. law overturned by *Heller* extended to the home, "where the need for defense of self, family and property is most acute."³³⁶ The handgun ban essentially was prohibiting an entire class of firearms that are more often than not chosen for such a purpose.³³⁷ The *Heller* opinion characterizes a "core right" - the core of the Second Amendment is the right to keep firearms for the "lawful purpose of self-defense."³³⁸ It also permits ownership for other lawful purposes such as hunting and for sport.

Two years later the Supreme Court clarified that the Second Amendment protected the right to keep and bear arms for lawful purposes and that the Second

³³⁴ Ibid.

³³⁵ Ibid.

³³⁶ Zuidema (2018), 822-3.

³³⁷ Ibid., 823.

³³⁸ Ibid., 826.

Amendment was applicable nationwide.³³⁹ *District of Colombia v. Heller* Supreme Court decision resolved the question regarding constitutional doctrine that the Second Amendment protects keeping and bearing arms for self-defense against crime.³⁴⁰

The courts use this approach to divide the Second Amendment into different levels of review based on whether the firearm is a semiautomatic handgun, semiautomatic rifle, or semiautomatic shotgun, or whether one is physically inside or outside the home.³⁴¹ Post *Heller* circuit courts are applying intermediate scrutiny when the core right is burdened.³⁴² In a circuit court follow-up to *Heller*, the D.C. Circuit found that registration requirements make it more difficult for a person to lawfully acquire and keep a firearm for defense of self and home. *Heller* ruled this was the core right secured by the Second Amendment.³⁴³ But the court concluded that intermediate scrutiny was appropriate because the laws did “not severely limit the possession of firearms.”³⁴⁴ Regarding the “assault rifle” and large capacity magazine bans, the same circuit court avoided applying strict scrutiny stating, “even assuming [these prohibitions] do impinge upon the right protected by the Second Amendment, we think intermediate scrutiny is the appropriate standard or review and the prohibitions survive that standard.”³⁴⁵ The conclusion was based on the fact that rifles, not handguns (“the quintessential self-defense weapon”) was the issue.³⁴⁶

³³⁹ *Ibid.*

³⁴⁰ Ruben et al. (2018) 1434; and Zuidema (2018), 813.

³⁴¹ *Ibid.*, 827.

³⁴² *Ibid.*, 828.

³⁴³ *Ibid.*

³⁴⁴ *Ibid.*

³⁴⁵ *Ibid.*, 828-9.

³⁴⁶ *Ibid.*, 829.

In *Heller II*, the D.C. Circuit applied intermediate scrutiny when they addressed the District’s ban on “assault weapons” and large capacity magazines (LCMs).³⁴⁷ The court dismissed the argument that the semi-automatic rifles at issue are not “in common use.”³⁴⁸ The court noted that “[a]pproximately 1.6 million AR-15s alone have been manufactured since 1986,” and “14.4 percent of all rifles, produced in the U.S. for the domestic market are AR-15’s.”³⁴⁹ Their argument that LCMs are not in common use was also rejected by the court.³⁵⁰

The D.C. circuit court then used intermediate scrutiny after disregarding “core versus periphery” analysis stating, the laws at issue “do not prohibit the possession of the quintessential self-defense weapon, the handgun” thus allowing a person to own a handgun for self-defense or hunting.³⁵¹ The court stated, “we are reasonably certain the prohibitions do not impose a substantial burden on that right.”³⁵² The court concluded that if an entire class of firearms is prohibited, it is subject to no higher scrutiny than any other firearm regulation if it does not impact the “core right” and allows alternatives which was an argument that was rejected in *Heller*.³⁵³

A problem arises when courts apply *Heller*’s description of the handgun as “the quintessential self-defense weapon” – i.e., other types of firearms receive less rigorous protection and are banned even if that firearm type is commonly owned.³⁵⁴ To provide

³⁴⁷ Ibid., 832.

³⁴⁸ Ibid.

³⁴⁹ Ibid.

³⁵⁰ Ibid.

³⁵¹ Ibid., 832-3.

³⁵² Ibid., 833.

³⁵³ Ibid.

³⁵⁴ Ibid.

context and an analogy, a popular shotgun, the Remington 870, is used for hunting and self-defense, and subsequently could be banned along with all other shotguns under intermediate scrutiny, so long as handguns remain available.³⁵⁵

Post-*Heller* Second Amendment decisions by courts decide between a few “tiers of scrutiny” which are nowhere to be found in the Constitution and are propped up by decades of court rulings.³⁵⁶ In practice, judges are permitted to act on personal policy preferences using a blameless standard.³⁵⁷ It is Zuidema’s view that under the *Heller* Test a complete ban on “assault weapons” would survive.³⁵⁸ To date, assault weapon bans have been subjected to intermediate scrutiny, and continue to survive.³⁵⁹

In summary, the Supreme Court has yet to hear a case that definitively clarifies the exact rights the Second Amendment protects. While *Miller* clarifies that a firearm not in common use by the militia can be banned, such as short-barreled shot-guns, *Heller* clarified that firearm possession, chiefly hand guns, can be used to protect self and home. It even called hand-guns “quintessential.” However, *Heller* led to a “test” that uses different levels of scrutiny to determine if a firearm is lawful or not. If this test permits judges to rely on personal policy preferences, then it can potentially lead to further confusion and bias when determining if a firearm is lawful or not.

³⁵⁵ Ibid.

³⁵⁶ Ibid., 835.

³⁵⁷ Ibid.

³⁵⁸ Ibid., 843.

³⁵⁹ Ibid.

Chapter 2: Understanding Types of Firearms

The following provides the definitions for firearms and different types of firearms from federal law such as the National Firearms Act. It includes definitions from the chief government agency created out of the 1968 Firearms Act; the Bureau of Alcohol Tobacco, Firearms and Explosives. And it includes an example of how a state defines firearms and the different types of firearms, i.e. the State of New Jersey for comparison. A description of how firearms function is also included as well as references to the correct appendices for the different types of firearms being discussed.

Categories of Firearms

So, what is a firearm? Alcohol Tobacco and Firearms (ATF) defines “firearm” as (A) any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device.³⁶⁰ This term does not apply to antique firearms.³⁶¹ The 1934 NFA (National Firearms Act) defines firearms to mean a pistol, a revolver, a shotgun having a barrel less than 16 inches in length, or any other firearm capable of being concealed on the person, a muffler or silencer, or a machine gun.³⁶² The State of New Jersey defines firearm(s) as “any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious

³⁶⁰ *Federal Firearms Regulations Reference Guide*, 7.

³⁶¹ *Ibid.*

³⁶² *National Firearms Act* (1934), 6.

thing, by means of a cartridge or shell or by the action of an explosive of the igniting of flammable or explosive substances.”³⁶³ The State of New Jersey also defines ammunition to mean “various projectiles, including bullets, missiles, slugs or balls together with fuses, propelling charges and primers that may be fired, ejected, projected, released, or emitted from firearms or weapons.”³⁶⁴

Self-loading firearms are semi-automatic firearms, and use the explosive force created by each round, as it is fired, to eject the spent cartridge and load the next round into the firing chamber.³⁶⁵ Self-loading firearms were first developed in the late 1880’s and became commonplace in the early 1900’s.³⁶⁶ Automatic firearms allow the shooter to achieve faster rates of fire since the shooter only has to pull the trigger whereas semiautomatic’s discharge one bullet per trigger pull.³⁶⁷ A semi-automatic can fire as rapidly as the shooter can squeeze and release the trigger.³⁶⁸ Many modern rifles, pistols, and shotguns are semiautomatic in operation and are generally loaded using detachable magazines. Non-semiautomatic long guns include bolt action, slide action, and breach loaders; non-semiautomatic pistols are called revolvers.³⁶⁹ Today semi-automatic firearms are common.³⁷⁰ Millions of semi-automatic pistols and rifles are sold in the United States yearly and are not subject to NFA restrictions.

³⁶³ New Jersey State Police Web Site: https://www.njsp.org/firearms/pdf/062408_title13ch54.pdf

³⁶⁴ Ibid.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

³⁶⁷ Ibid.

³⁶⁸ Ibid., 686.

³⁶⁹ Ibid.

³⁷⁰ Ibid., 307.

Assault rifles operate as the aforementioned semi-automatics described above. They include detachable magazines which can have the capacity to hold 10, 20 or 30 rounds. The exact definition for assault weapon is difficult to come by aside from these features and its method of operation. The features that can be included are pistol grips (allowing a weapon to be fired from the hip); flash suppressors (keeps the gun user from being blinded by muzzle flashes); a muzzle brake (aids in reducing recoil); a threaded barrel (can accept a silencer or suppressor); bayonet lugs; and grenade launchers.³⁷¹ Assault weapons ban advocates argue military style features enhance the firearms' ability to kill.³⁷² In contrast, gun owners argue the features are "cosmetic" in nature.³⁷³

The ATF *Federal Firearms Regulations Reference Guide* defines a "semi-automatic rifle" as any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge (see Appendix B for examples).³⁷⁴ A semi-automatic pistol is defined as any repeating pistol which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge (see Appendix F for examples).³⁷⁵ A semiautomatic shotgun is any repeating shotgun which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the

³⁷¹ Ibid.

³⁷² Ibid.

³⁷³ Ibid.

³⁷⁴ *Federal Firearms Regulations Reference Guide*, 9.

³⁷⁵ Ibid., 39.

trigger to fire each cartridge (See appendix D, Fig.'s 3-4 and 6).³⁷⁶ New Jersey defines semi-automatic as a firearm which fires a single projectile for each single pull of the trigger and is self-reloading or automatically chambers a round, cartridge or bullet.³⁷⁷

Following World War I automatic rifles became smaller and lighter.³⁷⁸ For example, the Thompson submachine gun, which was popular with soldiers and civilians.³⁷⁹ During the Prohibition era automatic rifles were used by organized crime and gangsters leading Congress to pass the National Firearms Act of 1934 (NFA).³⁸⁰ The NFA created special legal restrictions for all firearms capable of automatic fire which remain in effect today.³⁸¹ The 1934 NFA defines a machine gun as any weapon designed to shoot automatically or semi-automatically twelve or more shots without reloading.³⁸² The ATF *Federal Firearms Regulations Reference Guide* defines a machine gun as any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger....³⁸³ For comparison, in 1939 American troops were equipped with semi-automatic pistols as well as being equipped with semi-automatic rifles.³⁸⁴ Today, American troops are equipped with “less-powerful but higher-magazine-capacity semi-

³⁷⁶ Ibid.

³⁷⁷ New Jersey State Police Web Site: https://www.njsp.org/firearms/pdf/062408_title13ch54.pdf

³⁷⁸ Rostron (2018), 306.

³⁷⁹ Ibid.

³⁸⁰ Ibid.

³⁸¹ Ibid.

³⁸² *National Firearms Act* (1934), 1.

³⁸³ *Federal Firearms Regulations Reference Guide*, 37.

³⁸⁴ Ibid.

automatic pistols and less-powerful with burst-fire and higher-magazine-capacity rifles.³⁸⁵

A revolver is a projectile weapon, or pistol type, having a breechloading chambered cylinder so arranged that the cocking of the hammer or movement of the trigger rotates it and brings the next cartridge in line with the barrel for firing (see Appendix E).³⁸⁶

A shotgun is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger (see Appendix D).³⁸⁷ New Jersey defines shotgun as any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shots or a single projectile for each pull of the trigger, or any firearm designed to be fired from the shoulder which does not fire fixed ammunition.³⁸⁸

Rifles are defined as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.³⁸⁹ New Jersey

³⁸⁵ Ibid.

³⁸⁶ *Federal Firearms Regulations Reference Guide*, 38.

³⁸⁷ Ibid., 39.

³⁸⁸ New Jersey State Police Web Site: https://www.njsp.org/firearms/pdf/062408_title13ch54.pdf

³⁸⁹ *Federal Firearms Regulations Reference Guide*, 38.

defines a rifle as any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifled bore for each single pull of the trigger.³⁹⁰ The *US Army Special Forces Foreign Weapons Handbook* from 1970 defines a riffle as a “shoulder fired, air-cooled firearm, which fires a spin stabilized projectile.”³⁹¹ Additionally, “rotating is imparted to the projectile by lands and grooves, commonly referred to as ‘rifling,’ engraved in the inner walls of the barrel.”³⁹² Furthermore, “in the field of military rifles, the cartridge is fed from a container, the magazine, into the chamber by either manual or mechanical means.”³⁹³

A handgun is any firearm which has a short stock and is designed to be held and fired by using a single hand....³⁹⁴

Handguns and long guns are two categories of firearms.³⁹⁵ Handguns are designed to be fired with one hand and include pistols and revolvers.³⁹⁶ Rifles and shotguns are considered long guns and are designed to be fired using both hands.³⁹⁷ Firearms can also be categorized by type of action the firearm uses – the action being the mechanism that handles the ammunition.³⁹⁸ For example, a shooter must manipulate a lever on a bolt-action rifle to eject a spent cartridge from the rifles

³⁹⁰ New Jersey State Police Web Site: https://www.njsp.org/firearms/pdf/062408_title13ch54.pdf

³⁹¹ Moyer (1970), II.

³⁹² Ibid.

³⁹³ Ibid.

³⁹⁴ *Federal Firearms Regulations Reference Guide*, 37.

³⁹⁵ Rostron (2018), 304.

³⁹⁶ Ibid.

³⁹⁷ Ibid.

³⁹⁸ Ibid., 305.

chamber and put the next round of ammunition in the chamber to be fired.³⁹⁹ New automatic firearm technology was used during World War I when machine guns, capable of firing several hundred rounds per minute with one pull of the trigger, were used.⁴⁰⁰ A fully automatic firearm will continue firing until the shooter releases the trigger or the gun runs out of ammunition.⁴⁰¹ Early machine guns were large, not easily transportable and required a crew of several soldiers to operate it.⁴⁰² Lighter and more portable machine guns were under development by the end of World War I.⁴⁰³

The definitions for the term “firearm” are similar between the NFA, ATF and the State of New Jersey. What may be confusing to someone who is not familiar with firearms is the difference between automatic and semi-automatic. There may also be confusion as to the various parts of a firearm and their actual intended function beyond their appearance. For instance, a barrel shroud may look intimidating on a firearm compared to one that does not have a barrel shroud. Despite how a firearm may look on the outside the technology that makes them function is essentially the same and has remained so for over one-hundred years. A semi-automatic firearm, internally, functions the same as another semi-automatic firearm.

³⁹⁹ Ibid.

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid., 305-6.

⁴⁰² Ibid., 305.

⁴⁰³ Ibid.

Assault Weapons – what are they and how are they defined?

An assault weapon is a category of firearm.⁴⁰⁴ Assault weapons are also a highly polarizing subject culturally, politically and legally.⁴⁰⁵ Gun rights proponents contend there is no such thing as an “assault weapon” because the term is politicized by gun control advocates.⁴⁰⁶ Of course, others say that the term was invented by gun manufacturers and dealers to hype products and boost sales.⁴⁰⁷

Opponents to assault weapons bans argue that that these laws are based on cosmetic features of the firearm. Furthermore, laws aimed at “assault weapons” essentially prohibit guns that may have the appearance of a military weapon but function the same as other guns on the market that do not have these characteristics.⁴⁰⁸ On the other hand, gun control advocates argue that these laws are not just about appearances and that banned weapons do in fact have characteristics that make them more dangerous or more likely to be misused than other firearms.⁴⁰⁹ It is for this reason that legislators and the courts should consider how these guns are treated.⁴¹⁰

An ATF Working Group cites three characteristics which make military looking rifles more suitable for combat than sporting purposes: (1) military configurations (e.g., ability to accept a detachable magazine, folding or telescoping stocks, pistol grips or a bayonet); (2) they are semiautomatic versions of machine guns (i.e. military firearms

⁴⁰⁴ Rostron (2018), 303.

⁴⁰⁵ Ibid.

⁴⁰⁶ Rostron (2018), 303.

⁴⁰⁷ Ibid., 304.

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid.

with selective fire capability between semiautomatic and fully automatic); and (3) acceptance of centerfire (as opposed to rimfire) cartridges with a length of 2.25 inches or less (modern military assault rifles and machine guns are generally chambered to accept a centerfire cartridge case of 2.25 inches or less).⁴¹¹ While the presence of any one of these characteristics in a rifle would not always result in its being banned from importation, the overall configuration would be considered to determine if it gets approved.⁴¹² The ATF working group further concluded that the Secretary of the Treasury had the authority to evaluate types of firearms considering “semiautomatic assault rifles” to be a separate class of firearm.⁴¹³ Handgun proponents argue that “characteristics such as folding stocks, bayonet lugs or mounts, flash suppressors, pistol grips, and the capability to accept high-capacity ammunition magazines enable one to differentiate “assault weapons” from semiautomatic firearms.”⁴¹⁴ Fully-automatic will not be covered as these are already prohibited by the National Firearms Act of 1934.

“Semiautomatic rifles are labeled assault weapons because of their appearance, not their mechanics.”⁴¹⁵ They look like military rifles and usually are made of black metal and plastic rather than wood, a material that non-firearms enthusiasts are accustomed to.⁴¹⁶ In 1963, Colt began manufacturing the AR-15 “Sporter” rifle, a semiautomatic

⁴¹¹ *Assault Weapons* (1992), 54.

⁴¹² *Ibid.*, 53.

⁴¹³ *Ibid.*, 55.

⁴¹⁴ *Ibid.*

⁴¹⁵ *Ibid.*

⁴¹⁶ *Ibid.*

version of the U.S. Army's M-16.⁴¹⁷ According to Jacobs, "the AR-15 is the best-selling rifle in the United States."⁴¹⁸

While controversy surrounds the name assault weapon, the use of the term "assault weapon" was first used by the Germans to describe a fully automatic, scaled-down rifle in World War II.⁴¹⁹ The Sturmgewehr 44 rifle (See Appendix C, Fig. 1), translated as "storm rifle" or "assault rifle," could be fired in semi-automatic or fully automatic mode.⁴²⁰ The Sturmgewehr combined features of an infantry rifle – used for long range, and compact and lightweight submachine gun.⁴²¹ The Sturmgewehr fires a low-powered cartridge so it is easier to control during full-automatic fire.⁴²² After World War II nations began to adopt similar weapons for their militaries.⁴²³ For example, the Soviet Union adopted the AK-47 rifle and the United States adopted the M-16 rifle.⁴²⁴ Manufacturers then began to produce and market semi-automatic only versions of these weapons.⁴²⁵ The AR-15 is the semi-automatic only version of the M-16 which became popular outside of military use.⁴²⁶ The term "assault weapons" are the semi-automatic civilian versions of the M-16 military rifle (see Appendix C, Fig. 4 for a comparison between the Soviet AK-47 and the U.S. M-16).⁴²⁷ The term "assault rifle"

⁴¹⁷ Ibid.

⁴¹⁸ Ibid., 687.

⁴¹⁹ *Assault Weapons* (1992), Footnote 1, 1.

⁴²⁰ Rostron (2018), 308 and Goode (2013), A18.

⁴²¹ Rostron (2018), 308.

⁴²² Ibid.

⁴²³ Ibid.

⁴²⁴ Ibid.

⁴²⁵ Ibid.

⁴²⁶ Ibid.

⁴²⁷ Ibid.

was expanded when gun manufacturers began to sell civilians firearms modeled after military rifles.⁴²⁸

The *US Army Special Forces Foreign Weapons Handbook* from 1970 explains the difference between various weapons such as the Automatic Rifle (AR), Light Machine Gun (LMG) and an Assault Rifle (ASR). The handbook defines an Assault Rifle as a weapon designed to be fired from the shoulder or hip, usually fed from a box magazine, may occasionally use a bipod and generally weighs no more than twenty pounds.⁴²⁹ In contrast the Light Machine Gun or LMG is usually fired from a bipod or tripod, is box magazine or belt fed, may occasionally be fired from the shoulder and generally weighs no more than twenty-five pounds.⁴³⁰ The Automatic Assault Rifle or ASR functions so that it is usually fired from the shoulder though some models may have bipods, is normally fed from a box magazine, is capable of selective fire and generally weighs no more than eleven pounds.⁴³¹ It may be of interest to note that different armies have different definitions as to what type of weapon that may be handled.⁴³²

In the United States fully automatic firearm (i.e. machine gun) private ownership has been frozen since 1986, and none of the firearms proposed for additional legislative controls is capable of fully automatic fire.⁴³³ It has been argued that it is inappropriate to classify certain semiautomatic firearms into a distinct class because the guns do not have selective-fire capability that allows the user to select full-automatic fire (i.e. a

⁴²⁸ Goode (2013), A18.

⁴²⁹ Moyer (1970), II.

⁴³⁰ Ibid.

⁴³¹ Ibid.

⁴³² Ibid.

⁴³³ *Assault Weapons* (1992), Footnote 1, 1.

separate trigger pull is required to fire each round).⁴³⁴ Certain characteristics such as folding stocks, pistol grips, and large capacity magazines make these guns recognizably distinctive.⁴³⁵ The State of New Jersey has a multi-part definition for assault weapon. Part (1) list some three dozen different firearms by name while part (2) states “any firearm manufactured under any designation, which is substantially identical to any of the firearms listed in (1).” Part (2) goes on to state: “A semi-automatic firearm should be considered to be ‘substantially identical’ to a named assault weapon if it meets the below listed criteria:”

One, a semi-automatic rifle that has the ability to accept a detachable magazine and has at least two of the following: (1) A folding or telescoping stock; (2) A pistol grip that protrudes conspicuously beneath the action of the weapon; (3) a bayonet mount; a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and (5) a grenade launcher;

Two, a semi-automatic pistol that has an ability to accept a detachable magazine and has at least two of the following: (1) An ammunition magazine that attaches to the pistol outside of the pistol grip; (2) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer; (3) A shroud that is attached to, or partially or completely encircles the barrel and that permits the shooter to hold the firearm with the non-trigger hand without being burned; (4) manufactured weight of 50 ounces or more when the pistol is

⁴³⁴ Ibid.

⁴³⁵ Ibid.

unloaded; and/or (5) a semi-automatic version of an automatic firearm; and three, a semi-automatic shotgun that has at least two of the following; (1) A folding or telescoping stock; (2) A pistol grip that protrudes conspicuously beneath the action of the weapon; (3) A fixed magazine capacity in excess of six rounds; and/or (4) An ability to accept a detachable magazine; two, a semi-automatic shotgun with either a magazine capacity exceeding six rounds, a folding stock or a pistol grip; three, a semi-automatic rifle with a fixed capacity exceeding 15 rounds; or four, a part or combination of parts designed or intended to convert a firearm into an assault firearm, nor any combination of parts from which an assault firearm may be readily assembled if those parts are in the possession or under the control of the same person.⁴³⁶

The distinction between an assault weapon and a non-assault weapon is in the eye of the beholder.⁴³⁷ It is possible that support for banning assault weapons comes from the misplaced belief that they are machineguns or a misunderstanding due to the label “assault weapon.”⁴³⁸ Certain components of assault rifles have “military-style characteristics” such as pistol grips, large magazines and collapsible stocks. Other characteristics include the rifle’s color (black or camouflage), and attachments such as bayonets and flash suppressors. Gun control opponents argue such weapons are targeted because they are “ugly” and are perceived to be more dangerous than other firearms. Opponents further argue that it is not possible to distinguish semiautomatic

⁴³⁶ New Jersey State Police Web Site: https://www.njsp.org/firearms/pdf/062408_title13ch54.pdf

⁴³⁷ Jacobs (2015), 707.

⁴³⁸ Ibid.

military-style firearms because they function the same as firearms commonly used for hunting and other legitimate purposes. The ATF Working Group uses a sporting purpose test to determine whether a firearm is ‘particularly suitable’ for “traditional sports or target shooting, skeet and trap shooting, and hunting.”⁴³⁹ The ATF working group did not consider whether these firearms met the sporting purpose test of the statute, nor did it consider whether these firearms were used by violent offenders.⁴⁴⁰ Proponents of gun control contend that firearms with these features are attributes of firearms used for military or criminal purposes (e.g. large capacity magazines and pistol grips are perceived to make it easier for “spraying” rounds from the hip).⁴⁴¹

One feature of assault weapons that is frequently brought up are the terms “high-capacity magazine” or “large-capacity magazine” (LCM). The term “high capacity magazine” does not have a universal definition.⁴⁴² Some states limit magazine sizes to seven rounds of ammunition, however the general consensus among states with magazine restrictions is usually ten rounds.⁴⁴³ Ten round limits are often proposed for magazine bans.⁴⁴⁴ High-capacity magazines can be tentatively defined as magazines hold more than ten rounds of ammunition.⁴⁴⁵ New Jersey defines large capacity ammunition magazine as a “box, drum, tube or other container, which is capable of holding more than 15 rounds of ammunition to be fed continuously and directly into a

⁴³⁹ *Assault Weapons* (1992), 54.

⁴⁴⁰ *Ibid.*, 54-5.

⁴⁴¹ *Ibid.* 39.

⁴⁴² Colvin (2013), 1967-8.

⁴⁴³ *Ibid.*, 1968.

⁴⁴⁴ Kopel (2014), 849.

⁴⁴⁵ Colvin (2013), 1069.

semi-automatic firearm.”⁴⁴⁶ (Please note that this definition came from the NJSP web site and was not updated after New Jersey Governor Phil Murphy signed into law a cap of ten rounds for firearm magazines in 2018).⁴⁴⁷

Detachable magazines that hold more than ten rounds of ammunition are common in the United States with an estimated thirty million in circulation.⁴⁴⁸ These magazines function and operate the same way magazines have in semi-automatic weapons for more than a century.⁴⁴⁹ Gun control proponents argue LCM’s allow shooters to be less accurate because more bullets can be “sprayed” and potentially hit more victims.⁴⁵⁰

High-capacity magazines satisfy the common use test under the *Heller* decision that they must be neither “dangerous nor unusual.”⁴⁵¹ This issue is further complicated by social attitudes and a perception that they are more dangerous.⁴⁵² While high-capacity magazines are not unusual, there is debate whether they qualify as dangerous.⁴⁵³ So why restrict magazine capacity? The most common rationale for banning large capacity magazines is that they allow mass killers to fire many rounds without reloading, despite LCMs having been used in less than one third of 1% of mass shootings.⁴⁵⁴ Many different types of long guns (i.e. rifles), as well as different

⁴⁴⁶ New Jersey State Police Web Site: https://www.njsp.org/firearms/pdf/062408_title13ch54.pdf

⁴⁴⁷ See ftp://www.njleg.state.nj.us/20182019/S0500/102_I1.HTM

⁴⁴⁸ Colvin (2013), 1069.

⁴⁴⁹ Ibid.

⁴⁵⁰ *Assault Weapons* (1992), 40.

⁴⁵¹ Colvin (2013), 1069.

⁴⁵² Ibid.

⁴⁵³ Ibid., 1070.

⁴⁵⁴ Kleck (2016), 28.

handguns, accept detachable magazines. They facilitate reloading, appeal to competitive shooters, and are used for self-defense.⁴⁵⁵ When the rounds are spent in a detachable magazine the shooter can eject the empty magazine and reload a fresh magazine in a couple of seconds.⁴⁵⁶ The rationale for banning LCMs is In those few seconds, a potential mass shooting victim might escape or subdue the shooter.⁴⁵⁷ Statistics indicate the majority of mass murders committed with a firearm have used firearms other than those classified as assault weapon, and it is common for rampage killers to use several different guns or to carry several loaded magazines.

Firearms, such as the AR-15, are commonly owned and used for sport, hunting and self-defense making them one of the most popular rifles in the country.⁴⁵⁸ The purpose, popularity, and function of the AR-15 is identical to the semi-automatic handguns in the *Heller* decision.⁴⁵⁹ Zuidema writes, “[t]here is no meaningful or persuasive constitutional distinction between semi-automatic handguns and semi-automatic rifles.”⁴⁶⁰ While seven states and the District of Columbia have prohibitions on assault weapons, they have been available for civilian purchase since the early 1960’s.⁴⁶¹ A ban on assault rifles would probably fail the *Heller* Test – although this is not assured.⁴⁶²

⁴⁵⁵ Jacobs (2015), 689.

⁴⁵⁶ Ibid.

⁴⁵⁷ Ibid.

⁴⁵⁸ Zuidema (2018), 843 and Reaser (2016), Forward.

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid., 843-4.

⁴⁶² Ibid., 844.

The counter-argument is that the AR-15's and LCMs are too similar to their military counterparts to be protected by the Second Amendment.⁴⁶³ The scope of firearms that fall within the protection of the Second Amendment is broad and extends to "all instruments that constitute bearable arms."⁴⁶⁴ There are cosmetic similarities between the AR-15 and military weapons it is based on.⁴⁶⁵ The mechanical operation of the AR-15 is similar to the handguns in *Heller*.⁴⁶⁶ If it were fully automatic It would then be similar to a military weapon.⁴⁶⁷

Civilians have commonly used semi-automatic guns for recreation and self-defense since the turn of the twentieth century.⁴⁶⁸ Assault rifles were developed by the Germans during World War II and adopted by the major post-war powers after the war.⁴⁶⁹ These rifles combine the suppressing fire capabilities of the less-powerful submachine guns and the semi-automatic fire capabilities of battle rifles.⁴⁷⁰ Assault rifles are less powerful than traditional military rifles, and fire similar ammunition used for hunting and target shooting.⁴⁷¹ The smaller size of the ammunition makes carrying more rounds easier for soldiers to carry in quantity, and the recoil from these rifles is easier to manage during sustained fire.⁴⁷²

⁴⁶³ Ibid.

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid.

⁴⁶⁶ Ibid.

⁴⁶⁷ Ibid.

⁴⁶⁸ Ibid.

⁴⁶⁹ Ibid.

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid.

⁴⁷² Ibid.

The AR-15 rifle has several uses including sport, hunting, and self-defense.⁴⁷³ The rifle is popular because it can be customized to suit the user and there are a variety of aftermarket parts available.⁴⁷⁴ Firearm enthusiasts can build and customize their rifles to suit their needs.⁴⁷⁵ Some of the aftermarket modifications available include different trigger groups, but stocks, grips, low-profile gas blocks, and free-float handguards.⁴⁷⁶

There is only one true AR-15 rifle which is any rifle designated by Colt's Manufacturing Company, LLC.⁴⁷⁷ Colt is the registered owner of the AR-15 trademark (see Appendix A, Fig. 3).⁴⁷⁸ Therefore, all similar rifles resembling the Eugene Stoner/Armalite Rifle design that are not designated by Colt as an AR-15 are clones or modified clones of the AR-15 (see Appendix A, Fig. 1).⁴⁷⁹ The designation "AR" and "AR-15" refer to most civilian semi-automatic rifles based on the U.S. military's M4/M16-platform weapons.⁴⁸⁰

The lower receiver of the AR-15 is the (ATF) controlled part of the AR-15 style rifle.⁴⁸¹ And purchase of a stripped lower receiver is treated as a firearm acquisition (see Appendix A, Fig. 5).⁴⁸² It must be purchased through a Federal Firearms License (FFL) dealer and the buyer must complete Form 4473 and pass the background check before they are able to take possession of a receiver.⁴⁸³

⁴⁷³ Reaser (2016), Forward

⁴⁷⁴ Ibid.

⁴⁷⁵ Ibid.

⁴⁷⁶ Ibid.

⁴⁷⁷ Ibid.

⁴⁷⁸ Ibid.

⁴⁷⁹ Ibid.

⁴⁸⁰ Ibid.

⁴⁸¹ Ibid.

⁴⁸² Ibid.

⁴⁸³ Ibid.

Some of the defining features that are banned actually make the firearm safer, easier to use, or more accurate.⁴⁸⁴ For instance, a flash suppressor reduces the muzzle flash when the bullet is fired so there is less chance the shooter will be blinded in low-light conditions.⁴⁸⁵ Pistol grips and thumb hole stocks make it easier for the shooter to hold and steady the firearm.⁴⁸⁶ A folding or telescopic stock makes it easier to transport and hold the firearm.⁴⁸⁷ Bayonet lugs and grenade launcher mounts are decorative.⁴⁸⁸ Neither have been a crime problem.⁴⁸⁹

Civilians cannot easily acquire the same automatic weapons used by the military leaving semi-automatic-only variations of military rifles available for purchase.⁴⁹⁰ These rifles are light, durable and have legitimate civilian uses.⁴⁹¹ They are often used by ranchers and farmers as varmint and utility rifles, boaters off the coast of Florida use them as protection against armed drug runners as well as collectors and hobbyists acquiring them.⁴⁹² Accordingly, American civilians can find practical, sporting and recreational uses for military looking semi-automatics.⁴⁹³

There is a lot of confusion over what an assault weapon or assault rifle is. The various definitions add to this confusion. What someone should glean from this is that the parts that many believe make a rifle an assault weapon, for the most part, are

⁴⁸⁴ Ibid., 690.

⁴⁸⁵ Ibid.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid.

⁴⁸⁸ Ibid., 697.

⁴⁸⁹ Ibid., 690.

⁴⁹⁰ Ibid.

⁴⁹¹ Ibid.

⁴⁹² Ibid.

⁴⁹³ Ibid.

present for comfort and safety of the shooter. There are external parts that are cosmetic in appearance and generally serve no function such as a crimped barrel for a grenade launcher or a bayonet lug. However, there is still much debate over large capacity magazines and whether detachable magazines should be capped at a set capacity such as ten-rounds. Despite the features that make a rifle an assault weapon in the eyes of some, there are legitimate uses for these firearms in civilian hands. Several of these uses were listed above.

Government Firearm Statistics

Handguns are used in crimes ninety percent of the time while long guns and shot guns, are rarely used, and assault weapons even less so.⁴⁹⁴ Even if guns and assault weapons were banned criminals would not stop using guns to commit crimes. There are other firearm models available to use as alternatives.⁴⁹⁵ If a criminal wants to obtain an assault weapon, they would be available through other means, such as grandfathered assault weapons or prohibited assault weapons on the black market.⁴⁹⁶

The following statistics were taken from the charts and tables listed in Appendix H. According to the Uniform Crime Reports on the FBI web site there was a total of 15,129 murder victims in the United States in 2017 where a weapon (including firearms, knives, blunt objects, poison, explosives, narcotics, drowning, asphyxiation, and personal weapons including hands, fists, feet, etc.) of some sort was used.⁴⁹⁷ Total

⁴⁹⁴ Jacobs (2015), 707.

⁴⁹⁵ Ibid.

⁴⁹⁶ Ibid., 708.

⁴⁹⁷ <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/expanded-homicide-data-table-8.xls>

firearm use in those murders was 10,982 or approximately 72.6 percent of the murders were committed with some type of firearm.⁴⁹⁸ Handguns accounted for 7,032 of the murders or 64 percent of all murders by firearm.⁴⁹⁹ Rifles accounted for 403 of the murders by firearm or 3.7 percent of all firearm murders and just 2.7 percent of all murders by weapon.⁵⁰⁰ For comparison, shotguns accounted for 264 of the 10,982 firearm murders or 2.4 percent of all firearm murders.⁵⁰¹ Rifles were used 6.6 percent more often than shotguns in 2017.⁵⁰² “Other guns” accounted for 187 firearm murders or 1.7 percent of all murders by firearm.⁵⁰³ Firearm murders where the type of firearm was not stated accounted for 3,096 of the 10,982 murders or 28.2 percent of all firearm related murders.⁵⁰⁴ For further comparison, if we were to combine the number of rifle murders with the number *Firearms, type not stated* it would only account for 3,499 of the total firearm related murders or 31.9 percent of firearm murders – and only half of the 64 percent of handgun murders.

The use of knives or other cutting instruments is over three times higher than rifle use at 1,591 murders or 10.5 percent of all murders. Even the use of blunt objects exceeds the use of rifles for every year between 2013 and 2017, but only marginally.⁵⁰⁵ The use of personal weapons such as hands, fists, feet, etc. accounted for 696 murders

⁴⁹⁸ Ibid.

⁴⁹⁹ Ibid.

⁵⁰⁰ Ibid.

⁵⁰¹ Ibid.

⁵⁰² Ibid.

⁵⁰³ Ibid.

⁵⁰⁴ Ibid.

⁵⁰⁵ Ibid.

in 2017 or 4.6 percent of all murders compared to 2.7 percent of all murders committed with a rifle.⁵⁰⁶

Total firearm murders decreased between 2016 and 2017; 11,138 and 10,982 respectively; after a sharp increase between 2015 and 2016 when total firearm murders were 9,778 and 11,138 respectively.⁵⁰⁷ Although murder by a rifle sharply increased in 2017, compared to 2014 and 2015 which were tied at 258 rifle murders, the total number of rifle murders is still much lower than murders by handgun, knives, blunt objects and personal weapons when looked at on an individual basis.⁵⁰⁸

Please note that these statistics do not include other offenses where a firearm may have been used such as robbery, rape and aggravated assault. Illegal use of a firearm increases exponentially when comparing the number of known offenses for rape, robbery and aggravated assault. The percent of cases cleared is also presented. See Appendix H: Expanded Homicide Data Table 8 Murder Victims by weapon 2013-2017 from the FBI's Uniform Crime Reports. Unfortunately, this table only provides information that a "firearm" was used. It does not provide the type of firearm used. Only rape, robbery and aggravated assault is provided. Burglary, motor vehicle theft and arson are not being included as firearms were not used during the commission of these reported offenses.

⁵⁰⁶ Ibid.

⁵⁰⁷ Ibid.

⁵⁰⁸ Ibid.

The ATF provides statistics on the number of firearms produced in the United States on an annual basis between 1986 and 2015. See Appendix H: Exhibit 1. Firearms Manufactured (1986–2015). As of the 2017 *Firearms Commerce in the United States: Annual Statistics Update 2017* there were a total of 9,358,661 firearms produced in the United States. This does not include production for the U.S. Military but does include firearms purchased by domestic law enforcement.⁵⁰⁹ Rifle production was 3,691,799 or 39.4 percent of all firearms produced.⁵¹⁰ Pistols included 3,557,199 produced and 885,259 revolvers produced.⁵¹¹ Combined, as they are both handguns, is 47.5 percent of all firearms produced.⁵¹² For comparison, shotguns and miscellaneous firearms account for 777,273 and 447,131 or 8.3 percent and 4.8 percent of production respectively.⁵¹³

Of the 343,456 firearms exported in 2015 159,707 were rifles; 163,453 handguns (pistols and revolvers combined); 18,797 shotguns; and 1,499 miscellaneous firearms.⁵¹⁴ Backing out the total rifle exports from total rifle production (3,691,799 – 159,707 = 3,532,092 rifles) as well as backing out total firearms exported (9,358,661 – 343,456 = 9,015,205) from total production is 3,532,092 rifles produced for domestic consumption out of a total of 9,015,205 domestic firearms produced for domestic consumption.⁵¹⁵ This leaves rifles production at 39.2 percent of all firearms produced for domestic

⁵⁰⁹ <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>

⁵¹⁰ Ibid.

⁵¹¹ Ibid.

⁵¹² Ibid.

⁵¹³ Ibid.

⁵¹⁴ Ibid.

⁵¹⁵ Ibid.

consumption in 2015.⁵¹⁶ What is not provided in these figures are the number of semi-automatic rifles produced compared to bolt-action. Nor does it provide a figure for “assault rifles” produced and/or exported. However, looking at the total number of rifles produced for domestic consumption compared to the FBI statistics for the total number of murders with a rifle (258) nationwide in 2015 is approximately one rifle murder for every 13,690 domestic rifles produced (3,532,092 domestic rifles produced in 2015/258 rifle murders in 2015). This does not account for all firearms, let alone rifles, that were produced for U.S. consumption before 2015 and remain in the hands of their owners.

Firearm imports are available for the years 1986 through 2016 which is available in Appendix H: Exhibit 3. Firearms Imports (1986-2016).⁵¹⁷ For a consistent comparison the 2015 figures will be used. Out of 3,930,211 firearms imported into the United States 815,817 were rifles; 20.8 percent of total firearm imports.⁵¹⁸ Total U.S. rifle production for domestic consumption figured above is 3,532,092 U.S. produced rifles. With the import rifles added there were 4,347,909 rifles for U.S. domestic consumption in 2015.⁵¹⁹ Total firearms imported in 2015 including shotguns and handguns were 3,930,211.⁵²⁰ Total domestic production, excluding exported firearm, and including imported firearms is 12,945,416 firearms for domestic consumption⁵²¹ Rifle imports and those domestically produced, less domestic rifle exports, totals 4,347,909 rifles for

⁵¹⁶ Ibid.

⁵¹⁷ Ibid.

⁵¹⁸ Ibid.

⁵¹⁹ Ibid.

⁵²⁰ Ibid.

⁵²¹ Ibid.

domestic consumption.⁵²² Therefore, rifles account for 33.6 percent of total domestic firearms consumption in 2015. When compared to total rifle murders in 2015 there were (4,347,909 total rifles/258 rifle murders = 16,852.4) 16,852.4 rifles for every one rifle murder. Again, this does not account for rifles, let alone all firearms, imported to the United States in prior years and still in the hands of their owners. Nor does the statistics for imported rifles separate “assault rifles” from other types of rifles. No distinction is made between type of rifle, whether bolt-action, semi-automatic rifles and those considered “assault weapons.” It is not possible to discern which type of rifle was used to commit murder or another type of crime such as aggravated assault, robbery or rape. Therefore, all firearms classified as rifles are being included. Based on the volume of new rifles available in 2015 compared to the number of rifles used to commit murder indicates that firearms classified as rifles are a tiny fraction of firearms related murders.

Nationwide, 2017 saw a total of 151,910,488 firearms stolen and, just 22,230,563 were recovered or 14.6 percent (see Appendix H: Table 24 Property Stolen and Recovered by type and value 2017).⁵²³ New Jersey had 2,204 firearms used to commit aggravated assault out of 10,880 total aggravated assaults which is 20.3 percent of all aggravated assaults involving a firearm in the state.⁵²⁴ The state population of New Jersey is 9,005,544 and total aggravated assaults on a per-state population basis are a hundredth of one-percent (.0012 percent).⁵²⁵ The majority of aggravated assaults

⁵²² Ibid.

⁵²³ "Table 24." FBI. September 10, 2018. Accessed August 11, 2019. <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-24>.

⁵²⁴ "Table 22." FBI. September 10, 2018. Accessed April 11, 2019. <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-22>.

⁵²⁵ Ibid.

committed in New Jersey used “other weapons” at 3,634 which accounts for 33.2 percent of the 10,880 total aggravated assaults committed.⁵²⁶ The use of knives or cutting instruments was almost equal to the use of firearms at 2,132 or 19.6 percent and personal weapons accounted for 2,910 or 26.4 percent of all aggravated assaults.⁵²⁷

Statistics for New Jersey are provided for comparison. Total murders in 2017 committed in New Jersey were 324 (see Appendix H: Table 20 Murder by State, Types of Weapons, 2017).⁵²⁸ Firearm use accounted for 242 of the murders or 74.7 percent.⁵²⁹ Handguns accounted for 175 of the firearms murders while rifles accounted for 7 of the murders.⁵³⁰ Handguns accounted for 72.3 percent of firearm murders while rifles accounted for 2.9 percent of New Jersey firearm murders.⁵³¹ Handguns accounted for 54 percent of the total murders and rifles accounted for 2.2 percent of all murders committed in the state.⁵³² Unknown firearm type accounted for 23.1 percent of firearm murders and 17.3 percent of all murders in New Jersey.⁵³³ There were four shotgun murders in 2017 which is 1.7 percent of total firearms used and 1.2 percent of murders in New Jersey.⁵³⁴ Knives or cutting instruments; other weapons and; hands, fists, feet, etc. accounted for 42, 29 and 11 of the 2017 murders in New Jersey.⁵³⁵

⁵²⁶ Ibid.

⁵²⁷ Ibid.

⁵²⁸ "Table 20." FBI. September 10, 2018. Accessed April 11, 2019. <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-20>.

⁵²⁹ Ibid.

⁵³⁰ Ibid.

⁵³¹ Ibid.

⁵³² Ibid.

⁵³³ Ibid.

⁵³⁴ Ibid.

⁵³⁵ Ibid.

The purpose of these statistics is to show that many assaults occur without the use of a firearm. The statistics also show that the majority of assaults from 2017 in New Jersey occur with “other weapons” and the second most “assault weapon” used was “personal weapons” (hands, feet, fist, etc.). The statistics show that the use of firearms is the second lowest method to commit assault in New Jersey next to knives – and these two figures differ by less than one percent. It is also evident that the use of firearms is more often used to commit murder in New Jersey, specifically handgun use. What cannot be determined by any of these statistics is what type of handgun, whether a semi-automatic or revolver nor how many rounds the handgun can hold. Nor can it be determined what kind of rifle was used, whether a semi-automatic “assault rifle” or bolt-action rifle and how many rounds the rifle can hold. However, it can be inferred that despite the prevalent use of firearms to commit murder in New Jersey the number of total murders, not to mention firearm related murders, is quite low when compared to the 9,005,544 total residents in the state.⁵³⁶

When comparing to the national average New Jersey’s total 2017 murder count is 2.1 percent of the national murder rate while total firearm murders are 2.2 percent of the national average (see Appendix H: Table 22. Aggravated Assault by State, Type of Weapons, 2017).⁵³⁷ Handgun murders are 2.5 percent of the national rate and rifles account for 1.7 percent of the total national rate. New Jersey has 2.1 percent more total firearms related murders than the national rate. Handgun murders in New Jersey

⁵³⁶ "Table 22." FBI. September 10, 2018. Accessed April 11, 2019. <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-22>.

⁵³⁷ Ibid.

exceed the national rate by 8.3 percent while rifle murders are almost one percent lower at 0.8 percent. What can be inferred from this? One, current restrictive gun laws in place prior to 2017 have not managed to reduce the use of firearms, specifically handguns, to commit murder. New Jersey is slightly higher than the national average in total firearm use and handgun use to commit murder, 2.1 percent and 8.3 percent respectively while the use of rifles to commit murder is almost one percent less than the national rate. Restrictive gun laws have failed to reduce total firearm use and total handgun use compared to the national rate. At 0.8 percent less than the national average for rifle use could mean the use of a rifle to commit murder may not lend themselves well to the circumstances. For instance, drug deals and crimes of passion. Additionally, the use of handguns is most likely easier to come by for the perpetrators of the act.

The 1994 National Survey on Private Ownership and Use of Firearms (NSPOF) survey found that of the estimated 192 million firearms owned in the United States, 65 million were handguns, 70 million were rifles, 49 million were shotguns, and the remainder were “other guns.”⁵³⁸ Study results indicated that bans on specific firearms and ammunition were found to be inconsistent.⁵³⁹ Some studies indicated decreases in violence while others indicated an increase.⁵⁴⁰ “Several studies found the number of banned guns retrieved after a crime declined when bans were enacted, but these

⁵³⁸ First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws (2003), 2.

⁵³⁹ Ibid., 5.

⁵⁴⁰ Ibid.

studies did not assess violent consequences.”⁵⁴¹ Bans often include “grandfather” provisions that allow ownership of an item if it is acquired before the ban, which complicates an assessment of causality.⁵⁴² Furthermore, sales of firearms to be banned might increase in the period before implementation of the bans (e.g. the Assault Weapons Ban of 1994 when sales increased on the weapons that were to be banned).⁵⁴³

Assault weapons were used in approximately 2 percent of gun crimes and no more than 8 percent of gun crimes.⁵⁴⁴ Most of the assault weapons used in crime were “assault pistols” and not assault rifles.⁵⁴⁵ LCMs are used in crime more than assault weapons and accounted for 14 to 26 percent of gun crime prior to the ban.⁵⁴⁶ Assault weapons and guns with LCMs account for a higher share of guns used in murders of police and mass public shootings, albeit these incidents are rare.⁵⁴⁷

It is acknowledged these statistics are two years old at this time. However, they have been presented here to show the disparity in the crime of murder when a firearm is used compared to other types of weapons used. In addition, there is a significant statistical difference in crimes committed with a handgun to those committed with a long gun which includes rifles (assault weapons and non-assault weapons) and shotguns. Unfortunately, there are no statistics separating murders with firearms specifically labeled assault weapons.

⁵⁴¹ Ibid., 1.

⁵⁴² Ibid., 5.

⁵⁴³ Ibid.

⁵⁴⁴ Ibid., 2.

⁵⁴⁵ Ibid.

⁵⁴⁶ Ibid., i.

⁵⁴⁷ Ibid., 2.

Chapter 3: Mass Shootings

There is some difficulty in defining exactly what mass murder by firearm entails. For instance, should the wounded be counted with those who were killed? Are the wounded still considered victims? Should the shooter's motivation be a factor or do the victims have to have been specifically targeted? What about multiple murders occurring during the commission of another crime such as robbery?

Gang activity, drug dealing, robbery, drive-by shootings (explicitly or implicitly involving gang activity), organized crime (or professional hits), serial killings, and killings that took place over the span of more than one day are excluded in the definition.⁵⁴⁸ Public shootings occur in places such as schools, churches, businesses, bars, streets, government buildings, public transit facilities, places of employment, parks, health care facilities, malls, and restaurants.⁵⁴⁹

Womble defines "mass public shooting" to mean "a multiple homicide incident in which four or more victims are murdered with firearms – not including the offender(s) – within one event, and at least some of the murders occurred in a public location or locations in close geographical proximity."⁵⁵⁰ Meszaros defines mass shooting as an event with three or more victims that is not connected to gang, drug or organized crime activity.⁵⁵¹ Lott defines a mass public shooting as "one that occurred in a public place and involved two or more people either killed or injured by the

⁵⁴⁸ Ibid.

⁵⁴⁹ Ibid.

⁵⁵⁰ Womble (2018), 13.

⁵⁵¹ Meszaros (2017), 359.

shooting.⁵⁵² According to the RAND Corporation the FBI defines mass murder as four or more people killed in a single incident (not including the murderer) and generally in one location.⁵⁵³ Since there is not a common standard for defining a mass shooting it is common to use the FBI's criteria for mass murder of four victims and apply it to mass shootings.⁵⁵⁴ A common element to defining a mass shooting event is that it excludes a number of different types of events, for example organized crime and gang activity. The number of victims range from just two to four or more. It should also be noted that geographic location is a significant part in defining mass shooting incidents.

Causes

Not having a universal definition leads to the media, academics and law enforcement agencies providing their own definitions and subsequently differing statistics on the commonality of mass shootings.⁵⁵⁵ John Lott claims entertainment and news media are biased when it comes to reporting mass shooting incidents. They also exaggerate and sensationalize the incident.⁵⁵⁶ News stories depicting defensive gun use are infrequently covered compared to stories depicting illegal gun use.⁵⁵⁷ On the other hand, defensive uses of a gun generally involve just brandishing a weapon and no one is harmed. But these incidents are often not reported to the police.⁵⁵⁸ This makes it difficult to get an accurate figure on defensive guns use.⁵⁵⁹

⁵⁵² Lott (2010), 103.

⁵⁵³ Mass Shootings: Definitions and Trends (2028).

⁵⁵⁴ Ibid.

⁵⁵⁵ Ibid.

⁵⁵⁶ Lott (2010), 1-2.

⁵⁵⁷ Ibid., 2.

⁵⁵⁸ Ibid., 1-2.

⁵⁵⁹ Ibid., 2.

Lott found in a 2002 survey that 95 percent of defensive gun use entails simply brandishing the weapon.⁵⁶⁰ Cases covered by news media are not typical and most of the encounters involve a fatality.⁵⁶¹ “The news media also play an important role in shaping what we perceive as the greatest threats to our safety.”⁵⁶² Because live in a national news market and learn quickly what happens in other parts of the country can result in some events appearing more common than they actually are.⁵⁶³

A common argument in favor of banning guns involves the number of people who die from guns each year.⁵⁶⁴ According to Lott more children drown in bath tubs each year than die from firearm accidents.⁵⁶⁵ In 1992 there were 17,034 homicides and 18,169 suicides.⁵⁶⁶ According to Barry et al. there were 38,658 firearm deaths in 2016.⁵⁶⁷ It is unlikely that the government could eliminate most guns due to the large number of guns owned in the United States. For comparison, the government has not been able to eliminate illegal drugs and other illegal items from entering the country.⁵⁶⁸

The American media and gun control proponents tell us that shooting rampages are due to the “easy availability of guns” and “too many guns” in the hands of the public.⁵⁶⁹ On the other hand, gun rights advocates blame a criminal justice system that panders to criminals; failure of public education; fostering a culture of dependence,

⁵⁶⁰ Ibid., 3.

⁵⁶¹ Ibid.

⁵⁶² Ibid.

⁵⁶³ Ibid. and Faria (2013), 5.

⁵⁶⁴ Lott (2010), 10.

⁵⁶⁵ Ibid., 10.

⁵⁶⁶ Ibid., 10.

⁵⁶⁷ Barry (2017), 878.

⁵⁶⁸ Lott (2010), 11.

⁵⁶⁹ Faria (2013), 1.

violence, and alienation brought about by the welfare state; and the secularization of children growing up without moral guidance.⁵⁷⁰ Faria believes that the mental health system and the role of the media and popular culture that sensationalizes violence plays a part.⁵⁷¹

After the Sandy Hook Elementary School shooting on December 14, 2012 where six adults and twenty children were killed politicians were calling for gun control without examining the psychosocial factors that play a role in gun violence.⁵⁷² According to Faria there is mounting evidence that these “deadly rampages” result from the failure of our mental health system and the “systematic sensationalization of violence by the media and popular culture.”⁵⁷³ For example, 22-year old Jared Loughner who shot former U.S. Representative Gabrielle Giffords, including five people, while wounding 14 others, had shown signs of psychiatric illness and social psychopathology.⁵⁷⁴ Loughner most likely should have been referred for mental health evaluation and psychiatric treatment.⁵⁷⁵ Faria clearly states that “convicted felons and mentally unstable people forfeit the right to possess arms by virtue of the fact they are a danger to their fellow citizens.”⁵⁷⁶

A 2000 *New York Times* study revealed that in one-hundred cases of rampage shooting incidents, sixty-three involved people who made prior violent threats before the event.⁵⁷⁷ More than half of the shooters had overt signs of mental illness that had

⁵⁷⁰ Ibid.

⁵⁷¹ Ibid.

⁵⁷² Ibid., 2.

⁵⁷³ Ibid.

⁵⁷⁴ Ibid.

⁵⁷⁵ Ibid.

⁵⁷⁶ Ibid.

⁵⁷⁷ Ibid., 3.

gone untreated.⁵⁷⁸ A precipitating event along with failures in life and long-term mental illness eventually triggers the shooting rampage.⁵⁷⁹

A study by *Mother Jones* magazine found the majority of mass shooters in the past thirty years showed signs of mental health problems, which is supported by medical and legal literature.⁵⁸⁰ The number of shooting rampages has increased while the rate of violent crime and homicides – including those committed with firearms – has significantly decreased over the same period which coincides with an increase in firearms in the United States.⁵⁸¹ “The number of firearms has increased from approximately 200 million in 1995 to 300 million in 2012.”⁵⁸² These statistics coincide with a decrease in violent crime and property crime from 1990 through 2013 (when the article was written).⁵⁸³ The *Mother Jones* article was deficient in citing that there were no cases of a civilian with a gun stopping a killing from occurring.⁵⁸⁴ In contrast, Faria cites nine separate cases between November 1990 and December 2012 when a civilian with a gun prevented a mass killing.⁵⁸⁵

Faria cites a quote by *The Wall Street Journal* columnist John Fund who stated, “The chances of being killed in a mass shooting are about what they are for being struck by lightning.”⁵⁸⁶ Prior to the Newtown, Connecticut elementary school shooting the three worst mass K-12 school shootings took place in Great Britain, Germany and

⁵⁷⁸ Ibid.

⁵⁷⁹ Ibid.

⁵⁸⁰ Ibid.

⁵⁸¹ Ibid.

⁵⁸² Ibid.

⁵⁸³ Ibid.

⁵⁸⁴ Ibid.

⁵⁸⁵ Ibid., 3-5.

⁵⁸⁶ Ibid.

Norway in which 77 people were killed on July 22, 2011.⁵⁸⁷ The point being that strict gun control laws do not make those countries immune.⁵⁸⁸

A study conducted between 2005 and 2007 by the University of Wisconsin and Bowling Green State University found that nationally police were convicted of firearms violations at an 0.002 percent annual rate.⁵⁸⁹ This is in line with the rate for concealed-carry gun permit holders in states with “shall issue” laws.⁵⁹⁰ Other research conducted by criminology professor Gary Kleck and constitutional lawyer Don B. Kates found that firearms are more often used by law-abiding citizens to repel crime than used by criminals to commit crime.⁵⁹¹ Citizens who act in self-defense kill three times more assailants and robbers than do the police.⁵⁹² It is interesting to note that felons prefer large caliber handguns (i.e., larger than .32 caliber) in addition to the following characteristics: accuracy, not being able to trace the gun, and quality of construction.⁵⁹³ It is also interesting to note that the cost of the gun is immaterial to criminals when looking for their weapon of choice.⁵⁹⁴

Attention should be paid to social factors that lead to an increase in obtaining large caliber firearms; for example, the illegal drug trade, especially the increase in the

⁵⁸⁷ Ibid.

⁵⁸⁸ Ibid.

⁵⁸⁹ Ibid.

⁵⁹⁰ Ibid.

⁵⁹¹ Ibid.

⁵⁹² Ibid.

⁵⁹³ Ibid., 7.

⁵⁹⁴ Ibid.

use of crack-cocaine.⁵⁹⁵ Those involved in illegal drug trading cannot rely on legal means for protection, making guns a necessary tool to their illicit business.⁵⁹⁶

Unemployment has also been linked to several types of crimes, including homicide, illegal drug use, and illegal drug trade.⁵⁹⁷ The effects of homicide are not definite and appear to be indirect regarding homicide.⁵⁹⁸ The increase in gun homicide rates in the mid-1980's and early 1990's coincides with an increase in the illegal drug trade during the same period, which many believe this led to an increase in firearm use.⁵⁹⁹ The findings also indicate the number of guns in a particular area is not a predictor for gun homicide.⁶⁰⁰ However, there appears to be a positive relationship when examining the impact of gun density on gun aggravated assaults.⁶⁰¹

Gun homicides and aggravated assaults with a gun are not impacted by the availability of more powerful types of firearms when other factors are considered.⁶⁰² However, an increase in the availability of small caliber handguns without semiautomatic firing capability led to a decrease in gun homicides.⁶⁰³ Small caliber handguns may not be as lethal due to an inability to fire multiple rounds in rapid succession thus limiting the number of wounds a victim receives.⁶⁰⁴

⁵⁹⁵ Ibid.

⁵⁹⁶ Ibid., 9.

⁵⁹⁷ Ibid.

⁵⁹⁸ Ibid.

⁵⁹⁹ Ibid., 10.

⁶⁰⁰ Ibid., 23.

⁶⁰¹ Ibid.

⁶⁰² Ibid.

⁶⁰³ Ibid.

⁶⁰⁴ Ibid., 23-4.

On the other hand, large caliber firearms may not need to fire multiple rounds in rapid succession to have an effect on lethality as a larger projectile may increase the likelihood of death.⁶⁰⁵ The increase in the availability of less lethal types of firearms, which potentially controls what type of gun a criminal acquires, may decrease the occurrence of a gun assault resulting in death, thus reducing the rates of gun homicide.⁶⁰⁶

The lethality of gun assaults is dependent upon many variables such as: path of the bullet, organs affected, the distance the assailant and victim were from one another, and a person's control over their firearm.⁶⁰⁷ Additional factors that can influence lethality include: the victim-offender relationship, victim-offender characteristics, and circumstances involved in violent encounters.⁶⁰⁸ Other factors should be considered when examining the lethality of gun assaults such as the uniqueness of the situation and the anatomical characteristics of the shooting itself.⁶⁰⁹ Furthermore, gun caliber alone is not be the sole measure of lethality since certain types of ammunition, such as magnum rounds, can be potentially more lethal due to higher velocities.⁶¹⁰

In summary, it is significant to note that when there was an uptick in the illegal drug trade during the 1980's and early 1990's there was also an increase in gun homicide rates. Furthermore, the literature points to other societal factors, such as increase in unemployment, may have a bigger influence on gun homicide rates. There

⁶⁰⁵ Ibid., 24.

⁶⁰⁶ Ibid.

⁶⁰⁷ Ibid.

⁶⁰⁸ Ibid., 24-5.

⁶⁰⁹ Ibid., 25.

⁶¹⁰ Ibid., 26.

is a case to be made that an increase in gun murder rates coincides with increases in other crimes. However, this does not explain mass murders with a gun as firearm use in conjunction with the drug trade or gang activity is not included in mass shooting incidents.

Mental Health Aspects

Statistically, the vast majority of U.S. citizens who own firearms for hunting, family protection or legally carry concealed weapons for self-protection, and participate in shooting sports use firearms responsibly.⁶¹¹ But there are those who believe that the appearance of assault weapons and concerns over how they look matter because, “military style” assault weapons “emboldens” a disturbed individual and could increase the likelihood that they will commit a crime.⁶¹² Furthermore, “the widespread presence of these guns and the increasingly common practice of carrying them openly in public settings causes real and significant distress....”⁶¹³

We have some 20,000-gun laws on the books in America.⁶¹⁴ “The societal failure for violence, with guns or otherwise, lies elsewhere.”⁶¹⁵ Faria states, “we are too permissive to criminals and protective of the rights of deranged individuals, while we easily blame and propose more laws and controls to limit the rights of the lawful

⁶¹¹ Ibid., 2-3.

⁶¹² Ibid.

⁶¹³ Ibid.

⁶¹⁴ Ibid., 6.

⁶¹⁵ Ibid.

citizen....”⁶¹⁶ Furthermore, “guns are inanimate objects and it is the criminal who commits the crime that is responsible.”⁶¹⁷

The literature indicates that untreated mental illness resulting from lack of treatment significantly contributes to violent crime.⁶¹⁸ For example, those with schizophrenia, spectrum disorders, major depression, or bipolar disorder were nearly twice as likely to commit violent acts throughout their lifetime.⁶¹⁹ According to the literature there are failures in the mental health system which have worsened in recent years. Especially with the process of de-institutionalization of mental health patients in the 1960’s.⁶²⁰ This put thousands of mental health patients, including dangerous ones, back on the streets.⁶²¹ Current privacy laws are another problem.⁶²² Parents have a difficult time obtaining health records for their children.⁶²³ These problems can be corrected by relaxing privacy laws.⁶²⁴ Family members and neighbors should not fear reporting individuals with a history of violence and possible mental illness.⁶²⁵ It should be easier to legally commit those in need of psychiatric care – i.e. remove the legal restrictions currently in place.⁶²⁶ It has been found that once patients get treatment they respond well and are able to function in society.⁶²⁷

⁶¹⁶ Ibid.

⁶¹⁷ Ibid.

⁶¹⁸ Meszaros (2017), 359.

⁶¹⁹ Ibid.

⁶²⁰ Faria (2013), 6.

⁶²¹ Ibid.

⁶²² Ibid.

⁶²³ Ibid.

⁶²⁴ Ibid.

⁶²⁵ Ibid.

⁶²⁶ Ibid., 7.

⁶²⁷ Meszaros (2017), 359.

Steven P. Segal of the University of California at Berkeley has shown that “a third of the state-to-state variation in homicide rates was attributable to the strength or weakness of involuntary civil-commitment laws.”⁶²⁸ There has been a drastic drop in the long-term institutionalization of the mentally ill.⁶²⁹ For instance, many killings would have been prevented in the mid-1960’s because “severely mentally ill would have been confined and cared for in a state institution.”⁶³⁰

To summarize, there are several good cases to be made for mental illness as a factor behind committing violent crime and mass shootings. This should not be considered the sole cause as the previous section pointed to societal factors such as unemployment. Not to mention other (violent) crimes being committed in conjunction with gun crime such as the illegal drug trade.

Violence in the United States

The Kennedy assassination woke America up to gun violence, and the existence of the gun lobby.⁶³¹ Those who view the Constitution as a living document contend the framers of the Constitution could not have foreseen today’s assault weapons or today’s violent society.⁶³² Another contributing factor is how the media report the news and how popular culture sensationalize violence.⁶³³ Namely those seeking their fifteen minutes of fame and “reality” television shows.⁶³⁴ According to Faria extensive coverage

⁶²⁸ Faria (2013), 7.

⁶²⁹ Ibid.

⁶³⁰ Ibid.

⁶³¹ Bogus (2000), 6.

⁶³² Ibid.

⁶³³ Ibid.

⁶³⁴ Ibid.

of shooting rampages by the media is a “major contributing factor in the pathologic and even morbid attainment of celebrity status even in death.”⁶³⁵

For instance a study of homicide rates in Canada found they were not related to easy gun availability but to criminal behavior associated with watching television.⁶³⁶

Homicide rates also climbed ten to fifteen years after the introduction of television in the America.⁶³⁷ In fact, homicide rates doubled in the U.S. after the introduction of

television.⁶³⁸ Graphic violence today is worse than when television was initially

introduced.⁶³⁹ Anyone can easily view today’s movies and see violence on the Internet which adds to the means and availability of violent content.⁶⁴⁰ There is also the copycat

effect, a result of the speed the media report the news today and how fast it travels to the consumer in today’s society.⁶⁴¹ On the other hand, while the media sensationalizes

violence and mass shootings, they do not provide the other side of the story where

firearms are used beneficially to save lives and property.⁶⁴² These cases can be found in

independently published books or in other forms of mass media such as medical

journals in their “gun and violence” research.⁶⁴³

The confusion regarding assault weapons may be due to gun users and gun manufactures using the term “automatics” when referring to semi-automatic shotguns,

⁶³⁵ Ibid.

⁶³⁶ Ibid.

⁶³⁷ Ibid.

⁶³⁸ Ibid.

⁶³⁹ Ibid.

⁶⁴⁰ Ibid.

⁶⁴¹ Ibid.

⁶⁴² Ibid.

⁶⁴³ Ibid., 8.

rifles, and pistols.⁶⁴⁴ While this practice has not confused knowledgeable people, it may have led to uniformed journalists misreporting the facts.⁶⁴⁵ “Machine Gun USA,” a 1985 *Newsweek* cover story acknowledged the difference between semi-automatics and machine guns, but implied that semi-automatic guns could easily be converted to automatic.⁶⁴⁶ The article cited the higher firing rates of automatic weapons in the captions for the semi-automatic versions of the same weapons.⁶⁴⁷ After the 1989 Stockton, California schoolyard shooting by an “emotionally disturbed” man armed with a semi-automatic version of the Soviet AK-47 assault rifle, further fueled misinformation by journalists.⁶⁴⁸ The coverage frequently confused semi-automatics with machine guns.⁶⁴⁹

Adding to the confusion NBC and CNN after the Stockton attack would show their viewers machine guns being fired while discussing how semi-automatics operate with one bullet per trigger pull.⁶⁵⁰ A March 16, 1989 edition of *48 Hours* on CBS did acknowledge the difference between semi and full automatics.⁶⁵¹ However, reporter David Martin indicated that “semi-automatics can be fired fast enough and with better control than machine guns” while firing an actual assault rifle in semi-automatic and after firing it in fully automatic.⁶⁵² A comparison or mention of other conventional

⁶⁴⁴ Ibid.

⁶⁴⁵ Ibid.

⁶⁴⁶ Ibid., 3.

⁶⁴⁷ Ibid., 2.

⁶⁴⁸ Ibid.

⁶⁴⁹ Ibid.

⁶⁵⁰ Ibid.

⁶⁵¹ Ibid.

⁶⁵² Ibid.

looking semi-automatics that can be fired just as fast was not included in the story.⁶⁵³

David Martin did report that magazines can be changed so quickly that three 10-round magazines can nearly equal the firepower as one 30-round magazine.⁶⁵⁴ Martin also emphasized that semi-automatics can be converted into a machine gun.⁶⁵⁵ And gun prohibitionists claim semi-automatic assault weapons can be converted into machine guns more easily than other guns.⁶⁵⁶ However, any competent machinist who knows guns can convert a semi-automatic to automatic.⁶⁵⁷ According to the ATF, weapons that can be easily converted into machine guns are already regulated as machine guns.⁶⁵⁸ No one is calling for a ban on sporting weapons because hunting and target shooting are considered acceptable reasons for owning a gun.⁶⁵⁹ On the other hand, military-style semi-automatics are demonized as only being fit for drug dealers and mass murders despite the fact that police figures show “assault weapons” are rarely used in crimes.⁶⁶⁰

The increasing volume of violent images available today has been an ongoing concern for decades. It is not clear if this has any effect on mass shooters or if the effect is on how the consumer of the news perceives the event being reported. In light of this decades old trend it might be beneficial to compare studies on violent news stories and those who view the stories. It clearly deserves further study.

⁶⁵³ Ibid.

⁶⁵⁴ Ibid.

⁶⁵⁵ Ibid.

⁶⁵⁶ Ibid.

⁶⁵⁷ Ibid.

⁶⁵⁸ Ibid.

⁶⁵⁹ Ibid.

⁶⁶⁰ Ibid.

Gun Owners

Tonso maintains the Second Amendment is the most important reason that Americans should have access to guns.⁶⁶¹ This aspect is ignored in news coverage of gun issues.⁶⁶² When it is mentioned the commentary revolves around claims that the meaning of the Second Amendment is unclear, that it is outdated and should be repealed, or it protects the right of the National Guard to possess guns.⁶⁶³ Despite commentary on the meaning of the Second Amendment, sales of firearms continue.

Demographics

A 2015 study found that approximately one-million Americans become new gun owners each year.⁶⁶⁴ New gun owners were more likely than long-time gun owners to be liberal, own fewer guns, own only handguns, and own guns for one reason (predominantly for protection).⁶⁶⁵ Previous research found that gun owner characteristics include: firearm ownership is more likely among white men, live in rural areas, are middle-aged or older, have a middle to higher income, grew up with guns in the home, and live in Southern or Midwestern states.⁶⁶⁶ Furthermore, this research found that a majority of gun owners store firearms unlocked, own both handguns and long guns, and own three or more guns.⁶⁶⁷ It is estimated that ten-percent of gun owners are new owners, i.e. having become a new owner in the previous five years.⁶⁶⁸

⁶⁶¹ Tonso (1995), 6.

⁶⁶² Ibid.

⁶⁶³ Ibid.

⁶⁶⁴ Wertz et al. (2018), 871.

⁶⁶⁵ Ibid., 874.

⁶⁶⁶ Ibid., 871.

⁶⁶⁷ Ibid.

⁶⁶⁸ Ibid., 874.

There were approximately 55 million U.S. adult gun owners in 2015.⁶⁶⁹ Five years prior to the 2015 survey (2010-2015), 5.2 million U.S. adults became new gun owners.⁶⁷⁰ An estimated ten-percent of current gun owners were new gun owners with nearly 15-percent of gun owners with young children in their household were new to gun ownership.⁶⁷¹ This suggests that “gun ownership status may be more dynamic than a narrow focus on the concentration of more guns in fewer civilian hands might suggest.”⁶⁷² New gun owners own more than 11 million firearms of the 270 million guns in civilian hands while 70-million new and used firearms exchanged hands in the five years prior to the survey.⁶⁷³

Graham, reporting on a study by Stolzenberg and D’Alessio, separated gun availability into two categories: (1) legal gun availability; and (2) illegal gun availability.⁶⁷⁴ Results indicated that legal gun availability had no significant impact on the homicide rate, while illegal gun availability had a significant impact on the violent crime rate, gun crime rate, and youth crime rate.⁶⁷⁵ Research into private gun ownership tentatively suggests that gun ownership deters criminality and criminals fear confrontation with armed citizens.⁶⁷⁶ However, it is difficult to determine how many crimes might have been deterred due to fearing possible resistance by the victim.⁶⁷⁷

⁶⁶⁹ Ibid.

⁶⁷⁰ Ibid.

⁶⁷¹ Ibid.

⁶⁷² Ibid.

⁶⁷³ Ibid.

⁶⁷⁴ Graham (2007), 5.

⁶⁷⁵ Ibid.

⁶⁷⁶ Ibid.

⁶⁷⁷ Ibid., 5-6.

The task force reported that there were approximately 4.5 million firearms sold each year in the United States.⁶⁷⁸ Second-hand transactions (i.e., sales, trades, or gifts) ranged from 2 million to 4.5 million.⁶⁷⁹ It was further estimated that 0.5 million firearms are stolen annually.⁶⁸⁰ In other words, there could be upwards of 9.5 million firearms transactions per year.⁶⁸¹

The 1994 national Survey of Private Ownership of Firearms (NSPOF), conducted by the Chilton Research Services and sponsored by the National Institute of Justice, reported that American adults owned approximately 192 million working firearms, and average of one per adult.⁶⁸² The NSPOF also reported that only 24.6% of U.S. adults owned a firearm (41.8% of men and 9.0% of women).⁶⁸³ Another survey found that 41% of adults reported having a firearm in their home in 1994, and 35% did so in 1998.⁶⁸⁴ A third survey found that 35% of homes with children under age 18 had at least one firearm.⁶⁸⁵

Gun Control

Following the adoption of the Bill of Rights there was a dramatic change in the nature of society that was predominantly agrarian.⁶⁸⁶ A need for controlling firearms arose as conditions changed which was mainly a state responsibility through the use of

⁶⁷⁸ Ibid.

⁶⁷⁹ Ibid.

⁶⁸⁰ Ibid.

⁶⁸¹ Ibid.

⁶⁸² Ibid.

⁶⁸³ Ibid.

⁶⁸⁴ Ibid.

⁶⁸⁵ Ibid.

⁶⁸⁶ Ibid.

police power.⁶⁸⁷ States began defining certain guns as dangerous weapons and adopted legislation limiting the right of citizens to keep and bear certain kinds of firearms.⁶⁸⁸

“The manufacture, distribution, sale, acquisition, storage, transportation, carrying, and use of firearms in the United States are regulated by a variety of federal, state, and local laws and regulations.”⁶⁸⁹ Between 2000 and 2002 the Task Force on Community Preventive Services, an independent nonfederal task force, conducted a review of scientific evidence regarding the effectiveness of firearms laws in preventing violence.⁶⁹⁰ The review included violent crimes, suicide and unintentional injury.⁶⁹¹ The following laws were evaluated: bans on specific firearms or ammunition, restrictions on firearm acquisition, waiting periods for firearm acquisition, firearm registration and licensing of firearm owners, “shall issue” concealed weapon carry laws, child access prevention laws, zero tolerance laws for firearms in schools, and combination of firearms laws.⁶⁹² The findings found “insufficient evidence to determine the effectiveness of any of the firearm laws or combinations of laws reviewed on violent outcomes.”⁶⁹³ However, it is important to note that “evidence to determine effectiveness should not be interpreted as evidence of ineffectiveness.”⁶⁹⁴

⁶⁸⁷ Ibid.

⁶⁸⁸ Ibid.

⁶⁸⁹ First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws (2003), 2.

⁶⁹⁰ Ibid., 1.

⁶⁹¹ Ibid.

⁶⁹² Ibid.

⁶⁹³ Ibid.

⁶⁹⁴ Ibid.

The report states that firearms-related injuries in the United States declined since 2003 but remained the second leading cause of injury mortality in 2000 (the most recent year for complete data available).⁶⁹⁵ There were 28,663 firearms-related deaths in 2000: 16,586 (57.9%) suicides, 10,801 (37.7%) were homicides, 776 (2.7%) were unintentional, and 500 (1.7%) were legal interventions or intent not determined.⁶⁹⁶ It was estimated that 24.3% of the 1,430,693 violent crimes (murder, aggravated assault, rape, and robbery) committed in the United States were committed with a firearm.⁶⁹⁷

The federal government and individual states restrict the acquisition and use of firearms by individuals on the basis of their personal history such as prior felony conviction, conviction of misdemeanor intimate partner violence, drug abuse, adjudication as “mentally defective”, and other characteristics (e.g. age).⁶⁹⁸ The Brady Law established national restrictions on acquisition of firearms and ammunition from firearms licensees.⁶⁹⁹ The interim Brady Law (1994-1998) mandated a 5-day waiting period to allow background checks while the permanent Brady Law, enacted in 1998, eliminated the required waiting period.⁷⁰⁰

The permanent Brady Law relies on the National Instant Background Check System (NICS).⁷⁰¹ “However, NICS lacks much of the required background information, particularly on certain restriction categories.”⁷⁰² Approximately 689,000 applications to

⁶⁹⁵ Ibid., 1.

⁶⁹⁶ Ibid.

⁶⁹⁷ Ibid.

⁶⁹⁸ Ibid.

⁶⁹⁹ Ibid.

⁷⁰⁰ Ibid.

⁷⁰¹ Ibid.

⁷⁰² Ibid.

acquire a firearm (2.3% of 30 million applications) were denied under the Brady law between 1994 and 2000, were the majority of denials were based on the applicant's criminal history.⁷⁰³ It is important to note that denial of an application does not stop applicants from acquiring firearms through other means (black market, private sales, straw purchase, theft, etc.).⁷⁰⁴

Evaluations of the effects of acquisition restrictions on violence provided inconsistent findings: some studies indicate decreases in violence associated with restrictions while others indicated increases.⁷⁰⁵ One study found a "statistically significant reduction in the rate of suicide by firearms among persons aged 55 and older, but the reduction in suicide by all methods was not statically significant."⁷⁰⁶ Furthermore, this benefit appears to have been a consequence of the waiting period imposed by the interim Brady Law, and later dropped in the permanent Brady Law, rather than the restrictions based on the purchaser's characteristics.⁷⁰⁷ Waiting periods for firearm acquisition require a specified delay between application for and acquisition of a firearm.⁷⁰⁸ Both the federal government and states established waiting periods for the purpose of allowing time to complete background checks or to provide a cooling-off period for persons at risk of committing suicide or impulsive acts against

⁷⁰³ Ibid.

⁷⁰⁴ Ibid.

⁷⁰⁵ Ibid.

⁷⁰⁶ Ibid.

⁷⁰⁷ Ibid.

⁷⁰⁸ Ibid.

others.⁷⁰⁹ Studies on waiting periods yielded inconsistent results as some studies indicated a decrease while others indicated an increase.⁷¹⁰

Licensing and registration requirements are often combined with other firearms regulations, such as safety training or safe storage requirements.⁷¹¹ Registration requires that a record of the owner of specified firearms be created and retained, however the Firearm Ownership Protection Act of 1986 specifically prevents the federal government from establishing and maintaining a registry of firearms and their owners.⁷¹² Licensing required an individual to obtain a license or other form of authorization or certification to purchase or possess a firearm.⁷¹³ Only four studies examined the effects of registration and licensing on violence, and the findings were inconsistent.⁷¹⁴

Shall issue concealed weapon carry laws (shall issue laws) require the issuing of a concealed weapon carry permit to all applicants not disqualified by specified criteria.⁷¹⁵ Shall issue laws are generally implemented in place of “may issue” laws, in which the issuing of a concealed weapon carry permit is discretionary (based on criteria such as the perceived need or moral character of the applicant).⁷¹⁶ The third alternative is total

⁷⁰⁹ Ibid., 1.

⁷¹⁰ Ibid., 5.

⁷¹¹ Ibid., 6.

⁷¹² Ibid., 6.

⁷¹³ Ibid.

⁷¹⁴ Ibid.

⁷¹⁵ Ibid.

⁷¹⁶ Ibid.

prohibition of the carrying of concealed weapons which was in effect in six states in 2001.⁷¹⁷

The number of studies of shall issue laws largely derives from one landmark study.⁷¹⁸ However, review of the data revealed problems, including misclassification of laws, unreliable county-level crime data, and failure to use appropriate denominators for the available numerator crime data.⁷¹⁹ Methodological problems were also evident.⁷²⁰ As a result, there was insufficient evidence to determine the effect of shall issue laws on violent outcomes.⁷²¹

When states enacted concealed handgun laws the mean per-capita death rate from mass shootings dropped by 69 percent.⁷²² While there is a slight rise in total number of deaths and injuries immediately after a concealed-handgun law is implemented since relatively few people have concealed-handgun permits, it quickly falls after that with a rate of zero five years after the law is enacted in ten states that changed their law in the period between 1977 and 1992.⁷²³ It is speculated that during this initial early period those planning such shootings decide to do them sooner before too many citizens acquire concealed-handgun permits.⁷²⁴ However, a look at death and injury rates in eight states that passed such laws prior to 1977 shows the rates to be

⁷¹⁷ Ibid.

⁷¹⁸ Ibid.

⁷¹⁹ Ibid., 6-7.

⁷²⁰ Ibid., 7.

⁷²¹ Ibid.

⁷²² Lott (2010), 105.

⁷²³ Ibid., 105.

⁷²⁴ Ibid., 105-6.

quite low but not zero.⁷²⁵ This indicates that while injury and death rates fall dramatically after passing concealed-handgun laws, it is not likely the true rate will fall to zero in states that adopt these laws.⁷²⁶

Using data through 1992, Lott found that enacting concealed-handgun laws in states that do not currently have them would increase accidental deaths by less than one – i.e. 0.851 deaths, or by nine more accidental handgun deaths if the rest of the country had adopted such laws.⁷²⁷ Furthermore, the net reduction in total deaths would have been approximately 1,405 to 1,583.⁷²⁸ In conclusion, concealed-handgun laws have equal deterrent effects on murders committed with and without guns.⁷²⁹ Furthermore, the number of lives lost to accidental gun deaths is statistically very small compared to the number of lives saved from fewer murders. The evidence also implies that concealed-handguns are more economically cost effective and provide a higher return at reducing crime than increased law enforcement or incarceration, other private security, or social programs such as early educational intervention.⁷³⁰ Nationwide indications are that when more people own guns a 1 percent increase in the number of people owning guns reduces victim costs by over 3 billion dollars.⁷³¹

Gun control legislation proponents also argue that military-style firearms have no legitimate purpose in private ownership.⁷³² While opponents argue that these

⁷²⁵ Ibid., 106.

⁷²⁶ Ibid.

⁷²⁷ Ibid., 114.

⁷²⁸ Ibid.

⁷²⁹ Ibid.

⁷³⁰ Ibid., 119.

⁷³¹ Ibid.

⁷³² *Assault Weapons* (1992), 47.

firearms are used lawfully by citizens for self-defense, recreation, or as collectibles.⁷³³

Some assault weapon legislation considered by Congress has been opposed because “it would provide broad authority for disarming lawful citizens” while these same semiautomatic firearms have been argued to be more suitable for self-defense than other firearms.⁷³⁴

These same firearms are used or obtained for a variety of lawful purposes “which would fall under a broader interpretation of the ‘sporting purposes’ test or for reasons not necessarily related to the test (e.g. purchase for their collections or recreational shooting – known as “plinking”).⁷³⁵ Whether these firearms have lawful civilian uses can be answered partly by examining the personal preferences of firearms owners.⁷³⁶ These firearms have attributes such as limited recoil, which is valued by hunters and target shooters, as well as firearms collectors who may wish to own certain firearms because they resemble military small-arms.⁷³⁷

The Supreme Court of the United States has determined that there are certain preferred freedoms which are necessary to a democratic society, and neither the federal government nor the states may deny them to law-abiding citizens.⁷³⁸ The Court has been able to curb state action in such areas as freedom of speech, press, religion, peaceable assembly, and illegal search and seizure as examples by incorporating the

⁷³³ Ibid.

⁷³⁴ Ibid.

⁷³⁵ Ibid., 48.

⁷³⁶ *Assault Weapons* (1992), 48.

⁷³⁷ *Assault Weapons* (1992), 48-9.

⁷³⁸ Ibid., 41.

guarantees in the first ten amendments through the Fourteenth Amendment.⁷³⁹

However, the Court has not restricted states in legislation that has the effect of limiting the right to keep and bear arms.⁷⁴⁰ The result; states have been free to adopt their own standards on gun control.⁷⁴¹

According to Amar, broad handgun bans are unconstitutional while certain laws, such as barring felons from having guns, are valid.⁷⁴² Demands for a ban on such weapons or restrictions on weapons are not prevented by the Second Amendment.⁷⁴³ Gun advocates also argue that violence should guarantee the right of law-abiding citizens to bear arms for self-defense.⁷⁴⁴ In the view of the National Rifle Association (NRA), a Second Amendment proponent organization, the framers of the Constitution believed in an individual's right to bear arms since the use of the word "militia" in the second clause at the time recognized a militia as being all able-bodied men between the ages of 18 and 45.⁷⁴⁵

According to Jacobs, "gun control proponents expend considerable political capital to prohibit firearms that resemble military weapons but function the same as other semiautomatic weapons."⁷⁴⁶ Additionally, these weapons are rarely used in violent crime and infrequent in mass murder incidents.⁷⁴⁷ The media and politicians

⁷³⁹ Ibid.

⁷⁴⁰ Ibid.

⁷⁴¹ Ibid.

⁷⁴² Stein et al. (2016), 42.

⁷⁴³ Ibid.

⁷⁴⁴ Ibid.

⁷⁴⁵ Ibid., 39.

⁷⁴⁶ Jacobs (2015), 681-2.

⁷⁴⁷ Ibid., 682-3.

usually focus on the weapon rather than the killer after mass shooting atrocities.⁷⁴⁸

Assault weapons are not fully automatic machineguns, which have been controlled since 1934, and are rarely used in crimes.⁷⁴⁹ “Assault weapons” are semi-automatic firearms designed to look like military rifles.⁷⁵⁰ They are not military rifles, which are sometimes called assault rifles, such as the U.S. Army’s M-16 (see Appendix C, Fig. 4), that can be fired in automatic or semiautomatic mode.⁷⁵¹

Van Alstyne wrote in the *Duke Law Journal* those inclined to take the Second Amendment seriously refer to the statement a “well regulated Militia” as a reference to ordinary citizens and not a reference to regular armed soldiers as members of a standing army nor a reference to the state or local police.⁷⁵² Rather, the assumption is that ordinary citizens “may themselves possess arms, for it is from these ordinary citizens who as citizens have a right to keep and bear arms (as stated in the second clause).”⁷⁵³ “That right is made the express guarantee of the clause” meaning no room for claims that the amendment means to “reserve to Congress some power to contradict its very terms.”⁷⁵⁴ In other words, Congress may, if it deems it necessary or proper, to forbid the people to keep and bear arms because it sees fit to do so.⁷⁵⁵ “The right of the people to keep and bear Arms” is stated in the second clause and is

⁷⁴⁸ Ibid., 687-8.

⁷⁴⁹ Ibid., 688.

⁷⁵⁰ Ibid., 685.

⁷⁵¹ Ibid.

⁷⁵² Van Alstyne (1994), 1241-2.

⁷⁵³ Ibid., 1242.

⁷⁵⁴ Ibid.

⁷⁵⁵ Ibid.

identified as “the right” meaning that right is expressly guaranteed by the clause.⁷⁵⁶ The language is not meant to give Congress power to contradict its terms.⁷⁵⁷

The 1934 National Firearms Act (NFA) does not affect the owner, possessor or dealer of an ordinary shotgun or rifle despite the fact there were arguments to include such weapons.⁷⁵⁸ The 1934 NFA was not meant to have an effect on the hunter or marksman who wished to practice.⁷⁵⁹ However, the bill does provide two powers to the government, one is the taxing power and the second, the power to regulate interstate commerce.⁷⁶⁰ Currently the National Firearms Act (NFA) is part of the Internal Revenue Code of 1986. With the exception of the NFA, the Internal Revenue Code is administered and enforced by the Secretary of the Treasury.⁷⁶¹ The ATF transferred to the Department of Justice under the Homeland Security Act of 2002, and all its authorities, including the authority to administer and enforce the NFA, were transferred to the Attorney General in order to keep all the references throughout the Internal Revenue Code consistent.⁷⁶² References to the Secretary of the Treasury in the NFA were left unchanged by the Homeland Security Act, however section 7801(a)(2), Title 26, U.S.C., provides that references to the term “Secretary” or “Secretary of the Treasury” in the NFA shall mean the Attorney General.⁷⁶³

⁷⁵⁶ Ibid.

⁷⁵⁷ Ibid.

⁷⁵⁸ *National Firearms Act* (1934), 5-6.

⁷⁵⁹ Ibid., 5.

⁷⁶⁰ Ibid., 6.

⁷⁶¹ *ATF National Firearms Act Handbook* (2009), 89.

⁷⁶² Ibid.

⁷⁶³ Ibid.

Congress passed The Gun Control Act of 1968 to provide support to federal, State, and local law enforcement officials in their fight against crime and violence;⁷⁶⁴ and the National Firearms Act of 1934 which provides for the taxation of manufacturers, importers, and dealers in small firearms and machine guns, to tax the sale or other disposal of such weapons, and to restrict importation and regulate interstate transportation thereof.⁷⁶⁵ On May 24, 1938 the House of Representatives amended the National Firearms Act by partially exempting a certain type of firearm that consists of two barrels from which only a single discharge can be made from either barrel without manual reloading.⁷⁶⁶ The 1938 amended Firearms Act further allowed Congress to regulate the sale, transfer, and license of machine guns, sawed-off shotguns, sawed off rifles, and other firearms, other than pistols and revolvers, which may be concealed on the person, and silencers.⁷⁶⁷ This is similar to the current NFA and was enacted by Congress as an exercise of its authority to tax.⁷⁶⁸ However, there was an underlying purpose which was to curtail, if not prohibit, transactions in NFA firearms.⁷⁶⁹ These firearms were frequently used in crime, particularly the gangland crimes of that era such as the St. Valentine's Day Massacre.⁷⁷⁰ State Firearms Control Assistance of Title I, Section 101 of The Gun Control Act of 1968 states "...it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens

⁷⁶⁴ *Federal Firearms Regulations Reference Guide*, 7

⁷⁶⁵ *National Firearms Act: Hearings before the United States House Committee On Ways and Means* (1934).

⁷⁶⁶ *Amending the National Firearms Act* (1938), 1.

⁷⁶⁷ *Ibid.*

⁷⁶⁸ *ATF National Firearms Act Handbook* (2009), 1.

⁷⁶⁹ *Ibid.*

⁷⁷⁰ *Ibid.*

with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes.”⁷⁷¹

In 1989, ATF announced a temporary ban on the importation of military-style semiautomatic rifles.⁷⁷² As a result, the ATF Working Group on the Importability of Certain Semiautomatic Rifles (the Working Group) “was established to conduct the reevaluation of the importability” of the rifles in question.⁷⁷³ The Working Group considered whether rifles met the statutory test of being “generally recognized as suitable or readily adaptable to sporting purposes.”⁷⁷⁴ As a result, the administration permanently banned the importation of 43 types of military-style or “assault rifles previously approved for importation.”⁷⁷⁵ “Under current law, the Secretary of the Treasury is required to approve the importation of a firearm that ‘is generally recognized as particularly suitable for or readily adaptable to sporting purposes....’”⁷⁷⁶ Climbing homicide rates (by any weapon), the “war on drugs,” and other related public safety concerns are a few factors that led to the decision to reconsider importation based on whether these firearms meet the sporting purpose test.⁷⁷⁷

⁷⁷¹ *Federal Firearms Regulations Reference Guide*, 7

⁷⁷² *Assault Weapons* (1992), 48.

⁷⁷³ *Ibid.*, 51.

⁷⁷⁴ *Ibid.*

⁷⁷⁵ *Ibid.*, 52.

⁷⁷⁶ *Ibid.*

⁷⁷⁷ *Ibid.*, 42.

Those who support and sponsor legislation to place additional controls on military style semiautomatic firearms, and related accessories, argue the necessity of these controls to prevent the criminal use of these firearms.⁷⁷⁸ The argument being made is that these firearms have characteristics that distinguish them from other semiautomatic firearms and that they pose “unique threats” to society as they are preferred by criminals.⁷⁷⁹ A further argument in favor of stricter gun controls is that these firearms possess characteristics “optimized for human combat that go beyond any legitimate sporting or civil need.”⁷⁸⁰ In a memorandum dated November 14, 1997, President Clinton wrote “The number of weapons at issue underscores the potential threat the public health and safety that necessitates immediate action.”⁷⁸¹ The same memorandum includes information from a letter from Senator Dianne Feinstein emphasizing “that weapons of this type are designed not for sporting purposes but for the commission of crime.”⁷⁸²

Steps the government has taken to reduce gun crime include the establishment of a national criminal background check system for gun buyers as a result of the Brady Act, licensing reforms for firearms dealers, banning juvenile handgun possession, Project Safe Neighborhoods (a collaboration between U.S. Attorneys and local authorities to concentrate on local gun crime and increase punishment for firearms offenses), and a

⁷⁷⁸ *Assault Weapons* (1992), ii.

⁷⁷⁹ *Ibid.*

⁷⁸⁰ *Ibid.*

⁷⁸¹ *Memorandum On Importation of Modified Semiautomatic Assault-Type Rifles* (1977), 1575.

⁷⁸² *Ibid.*

ban on semiautomatic assault weapons and large capacity magazines through Title XI, Subtitle A of the *Violent Crime Control and Law Enforcement Act of 1994*.⁷⁸³

This Act, commonly referred to as the Assault Rifle Ban, imposed a ten year ban on the “manufacture, transfer, and possession” of certain firearms designated as assault weapons.⁷⁸⁴ The ban focuses on semiautomatic firearms having military style features and used by criminals but considered unnecessary in sport shooting or self-defense.⁷⁸⁵ These features include flash hiders, folding rifle stocks, and threaded barrels for attaching silencers.⁷⁸⁶ Eighteen models were banned by name including a “features test” that banned semiautomatic rifles having two or more military-style features.⁷⁸⁷ The ATF identified 118 models and variations that became prohibited by law as well as a number of foreign semiautomatic rifles banned from importation into the U.S. since 1989.⁷⁸⁸ The Act further banned large capacity magazines (LCMs) holding more than 10 rounds of ammunition.⁷⁸⁹ The ban on LCMs reaches beyond the assault weapons ban because there are many semiautomatic rifles that have not been banned that accept LCMs.⁷⁹⁰ Approximately 18 percent of civilian-owned firearms and 21 percent of civilian-owned handguns were equipped with LCMs as of 1994.⁷⁹¹

⁷⁸³ Koper et al. (2004), i.

⁷⁸⁴ Ibid.

⁷⁸⁵ Ibid., 1.

⁷⁸⁶ Ibid.

⁷⁸⁷ Ibid.

⁷⁸⁸ Ibid.

⁷⁸⁹ Ibid.

⁷⁹⁰ Ibid.

⁷⁹¹ Ibid.

The 1994 federal assault weapons ban had a sunset provision and died after ten years on September 13, 2004.⁷⁹² Congress did not act to renew it.⁷⁹³ Reasons for Congress not acting to extend the bill may be due to no mass shootings in the months prior to expiration that could have rallied public support for renewal.⁷⁹⁴ While violent crime declined there were no studies that attributed the decline to the assault weapons ban.⁷⁹⁵ Subsequently after the assault weapons ban expired consumer demand for “assault weapons” increased.⁷⁹⁶ The effects of the 1994 ban and 2004 expiration was a “massive increase in the number of assault weapons in civilian hands.”⁷⁹⁷

The assault weapons ban of 1994 exempted assault weapons and LCMs manufactured before September 13, 1994.⁷⁹⁸ At the time, there were approximately 1.5 million privately owned assault weapons in the U.S. and nearly 25 million pre-banned LCMs available in the U.S. as of 1995 according to gun industry estimates.⁷⁹⁹ There were an additional 4.7 million pre-ban LCMs imported to the U.S. from 1995 through 2000.⁸⁰⁰

The assault weapon and LCM ban was intended to reduce gunshot victimization by limiting semiautomatic firearms with large ammunition capacities and other features “conducive to criminal uses.”⁸⁰¹ Ultimately the assault weapon provision targeted a relatively small number of weapons based on features that have little to do with the

⁷⁹² Jacobs (2015), 690.

⁷⁹³ Ibid.

⁷⁹⁴ Ibid., 698.

⁷⁹⁵ Ibid.

⁷⁹⁶ Ibid., 699.

⁷⁹⁷ Ibid.

⁷⁹⁸ Ibid.

⁷⁹⁹ Ibid.

⁸⁰⁰ Ibid.

⁸⁰¹ Ibid.

weapons' operation while the LCM provision limited the ammunition capacity of non-banned firearms.⁸⁰²

Following the implementation of the ban gun crimes involving assault rifles declined by 17 to 72 percent in the localities examined for this study (Baltimore, Miami, Milwaukee, Boston, St. Louis, and Anchorage) based on data covering all or portions of the 1995-2003 post-ban period.⁸⁰³ However, the decline in assault weapon use was primarily due to a reduction in the use of assault pistols.⁸⁰⁴ "Assault pistols" are used in crime more than assault rifles.⁸⁰⁵ There was no clear decline in the use of assault rifles despite assessments being complicated by the rarity of crimes with these weapons as well as substitution of post-ban rifles.⁸⁰⁶ Despite the decline in assault weapon use there was an offset throughout the late 1990's by steady or rising use of other guns with LCMs in jurisdictions studied.⁸⁰⁷ The failure to reduce LCM use may be due to the supply of exempted pre-ban magazines that were further enhanced by imports.⁸⁰⁸ Since the ban failed to reduce the use of LCMs in crime it cannot be credited for the national drop in gun violence.⁸⁰⁹ Because the ban exempted millions of assault weapons and LCMs the effects of the law could only occur gradually.⁸¹⁰

⁸⁰² Ibid., 1-2.

⁸⁰³ Ibid.

⁸⁰⁴ Ibid.

⁸⁰⁵ Ibid.

⁸⁰⁶ Ibid.

⁸⁰⁷ Ibid.

⁸⁰⁸ Ibid.

⁸⁰⁹ Ibid.

⁸¹⁰ Ibid., 2-3.

Assault weapons were rarely used in gun violence before the ban.⁸¹¹ While LCMs are used more often in gun violence it is not clear how gun attacks depend on the ability of the offender to fire more than ten shots (magazine capacity under the ban) without reloading.⁸¹² Assault weapons or other semiautomatics with LCMs were used in 6 of 15 (40 percent) mass shooting incidents between 1984 and 1993 in which six or more persons were killed or a total of 12 or more people were wounded.⁸¹³ Furthermore, assault weapons recovered by police were associated with drug trafficking and organized crime, fueling a perception that assault weapons were the guns of choice for violent groups.⁸¹⁴ Ultimately, assault weapons and LCMs were used in a minority of crimes prior to the 1994 federal ban, and assault weapons were only a small percentage of crimes with a gun.⁸¹⁵

Opponents to firearms legislation claim it is not possible to “usefully” differentiate military-style semiautomatic firearms from other semiautomatic firearms.⁸¹⁶ Those who favor restrictions as well as firearm industry representatives have used the term “assault weapon” for these firearms.⁸¹⁷ Legislative proposals have also used the terms “assault weapon,” “restricted weapon,” or “semiautomatic assault weapon” to identify the firearms proposed for further controls.⁸¹⁸ Police officers are concerned with large capacity magazines due to the “high rate of fire and capacity for

⁸¹¹ Ibid., 3.

⁸¹² Ibid.

⁸¹³ Ibid., 14.

⁸¹⁴ Ibid.

⁸¹⁵ Ibid.

⁸¹⁶ *Assault Weapons* (1992), ii.

⁸¹⁷ Ibid., Footnote 1, 1.

⁸¹⁸ Ibid.

firepower” which was a factor in enacting legislation in California that banned their possession.⁸¹⁹ However, the number of rounds that may be fired before changing magazines is not the sole measure of a firearm’s lethality.⁸²⁰ A ballistics analyst noted that some of these firearms could be considered less lethal because the ammunition often used (7.62 x 39mm NATO-caliber) “is intermediate in power” and less powerful than many cartridges long in use.⁸²¹

Some argue that military-style semiautomatic firearms can be converted to full-automatic action.⁸²² The ATF has also noted that some semiautomatic firearms can be converted to full-automatic.⁸²³ The ATF considers the degree of difficulty in converting a semiautomatic to fully automatic, and a firearm easily converted can be banned from importation.⁸²⁴ Technicians with the FBI indicate a machinist with access to the proper machinery could convert any semi-automatic firearm to full-automatic.⁸²⁵ However, it depends on the model of firearm whether the conversion may be easy despite the feasibility of conversion.⁸²⁶ Gun control opponents argue that few semiautomatic firearms have been converted despite the feasibility.⁸²⁷ The ability of the shooter is also a factor as some may be able to fire many rounds in quick succession with a semiautomatic that rivals the rate of fire of a fully automatic firearm.⁸²⁸

⁸¹⁹ *Ibid.*, 40.

⁸²⁰ *Ibid.*

⁸²¹ *Ibid.*

⁸²² *Ibid.*, 41.

⁸²³ *Ibid.*

⁸²⁴ *Ibid.*

⁸²⁵ *Ibid.*, 42.

⁸²⁶ *Ibid.*

⁸²⁷ *Ibid.*

⁸²⁸ *Ibid.*, 43.

Opponents of control legislation consider the proposed filing requirements (using ATF form 4437) objectionable for several reasons: (1) they would not prevent criminals from obtaining guns, (2) they would be difficult to enforce and could create a further paperwork burden, (3) they could constitute *de facto* registration requirements; and (4) law-abiding citizens [who] make a mistake would be prosecuted.⁸²⁹ On the other hand, proponents argue the burdens are secondary if the policy results in lives saved.⁸³⁰ The most stringently constructed statutory guidance on whether firearms are “appropriate” for civilian use is the sporting purpose test for importation.⁸³¹ The ATF asserts that “some evidence” of lawful use should not control the decision to import.⁸³² *Gun South, Inc v. Brady* addressed the import ban and the statute’s use of the phrase “generally recognized suggests a community standard which may change over time even though the firearm remains the same.”⁸³³ “Development of a different ‘community standard’ could provide grounds for general acceptance of these firearms in the future.”⁸³⁴

Most assault weapons bans have been aimed at the AR-15, which is a semiautomatic version of the military’s M16, as well as including certain pistols and shotguns.⁸³⁵ The basic criteria a firearms ability to fire multiple rounds quickly, such as semiautomatic weapons, under an assault weapons ban.⁸³⁶ Assault weapons ban

⁸²⁹ Ibid.

⁸³⁰ Ibid.

⁸³¹ Ibid., 49.

⁸³² Ibid.

⁸³³ Ibid.

⁸³⁴ Ibid.

⁸³⁵ Ibid.

⁸³⁶ Ibid.

proponents argue the designation should apply to firearms used in the Newtown, Connecticut shootings and other mass killings, i.e. semiautomatic rifles with detachable magazines and “military” features like pistol grips, flash suppressors and collapsible or folding stocks.⁸³⁷ The contention is that these firearms were “designed for the battlefield, where the goal is to rapidly kill as many enemy soldiers as possible.”⁸³⁸ In contrast, Second Amendment proponents refer to the firearms in question as “tactical rifle” or “modern sporting rifle,” and object to the use of the term “assault weapon,” arguing the term should be used for full-automatic fire capable firearms.⁸³⁹ They further argue the firearms under discussion differ from other firearms in their styling.⁸⁴⁰

Josh Sugarman, a leading national gun prohibitionist, in 1988 was hoping for public support for restrictions on “semi-automatic assault weapons” because Americans were “uninformed” about guns and were “likely to remain so.”⁸⁴¹ Sugarman could rely on the public’s continued confusion because the nation’s leading news organizations (including major TV networks, newspapers, and magazines) would mislead the public about the capabilities of “assault weapons,” falsely implying the guns have no legitimate use, and ignored Second Amendment issues.⁸⁴² Due to the spread of this false information 70 percent of Americans polled supported the 1994 assault weapons

⁸³⁷ Goode (2013), A18.

⁸³⁸ Ibid.

⁸³⁹ Ibid.

⁸⁴⁰ Ibid.

⁸⁴¹ Tonso (1995), 2.

⁸⁴² Ibid.

ban.⁸⁴³ Journalists were able to point to their alarmist reporting as evidence that they were correct after whipping up hysteria about “assault weapons.”⁸⁴⁴

Domestic and foreign manufacturers offer semi-automatic-only assault rifles, submachine guns, and other automatic firearms for civilian sale in the United States.”⁸⁴⁵ Sugarman and other gun prohibitionists call these “high-tech-looking” guns “semi-automatic assault weapons.”⁸⁴⁶ But what distinguishes an assault weapon from other guns is the ability to fire the gun both automatically and semi-automatically. According to Tonso a gun that fires only semi-automatically is not an assault weapon despite what gun prohibitionists claim.⁸⁴⁷

Numerous studies completed prior to the 1994 assault weapons ban used varying definitions of what an assault weapon was.⁸⁴⁸ In general, the studies focused on semi-automatics with detachable magazines and military-style features.⁸⁴⁹ These studies found that assault weapons accounted for up to 8 percent of guns used in crime while a compilation of 38 sources indicated that assault weapons accounted for 2 percent of crime guns on average.⁸⁵⁰ The most common assault weapons prohibited by the 1994 ban accounted for between 1 and 6 percent of guns used in crime (according to local and national data sources examined for this study).⁸⁵¹ While there are limits to the sources cited in the study, the estimates consistently show that assault weapons are

⁸⁴³ Ibid.

⁸⁴⁴ Ibid.

⁸⁴⁵ Ibid.

⁸⁴⁶ Ibid.

⁸⁴⁷ Ibid.

⁸⁴⁸ Ibid., 15.

⁸⁴⁹ Ibid.

⁸⁵⁰ Ibid.

⁸⁵¹ Ibid.

used in a small fraction of gun crimes.⁸⁵² The highest estimates are no higher than 13 percent and include rare events that include mass murder and police murders.⁸⁵³ Many assault weapons are long guns which are used in crime less often than handguns.⁸⁵⁴ This may account for the relative rarity of assault weapons used in crime.⁸⁵⁵ In addition, survey evidence suggests that offenders rarely use assault weapons in crime.⁸⁵⁶ A 1991 national survey of adult state prisoners found that 2 percent reported using an assault weapon for the offense they were convicted of while 8 percent reported possessing a “military-type” firearm in the past.⁸⁵⁷

Koper et al. found that assault weapons accounted for 2.5 percent of guns produced between 1989 and 1994.⁸⁵⁸ The use of guns with LCMs is based on the combined use of assault weapons and non-banned guns with LCMs. This makes LCM use much greater than the use of assault weapons alone.⁸⁵⁹ Based on data for this study and prior studies, guns with LCMs were used in approximately 14 – 26 percent of most gun crimes prior to the ban [This includes all crimes and not just murder/mass murder].⁸⁶⁰ This range is consistent with a national survey that approximately 18 percent of all civilian-owned guns and 21 percent of civilian owned handguns were equipped with LCMs as of 1994.⁸⁶¹

⁸⁵² Ibid.

⁸⁵³ Ibid., 15-6.

⁸⁵⁴ Ibid., 16.

⁸⁵⁵ Ibid.

⁸⁵⁶ Ibid.

⁸⁵⁷ Ibid.

⁸⁵⁸ Ibid., 17.

⁸⁵⁹ Ibid., 18.

⁸⁶⁰ Ibid.

⁸⁶¹ Ibid.

The effects on gunshot victimizations and crime reduction by limiting assault weapons and LCMs may be significant.⁸⁶² Generally, hit rates are low in gunfire incidents and having more rounds to fire rapidly can increase the likelihood that offenders hit their targets as well as bystanders.⁸⁶³ Other available studies indicate that attacks with semiautomatic weapons, including assault weapons with LCMs, result in more shots fired, person wounded, and wounds per victim than do other gun attacks.⁸⁶⁴ For example, a study of handgun attacks in one city found that approximately 3 percent of gunfire incidents involved more than 10 rounds fired and accounted for almost 5 percent of gunshot victims.⁸⁶⁵ In the final analysis, banning weapons with military-style features may not produce additional benefits beyond what the 1994 assault weapons ban produced.⁸⁶⁶ But the most important feature of military-style weapons is their ability to accept LCMs.⁸⁶⁷ According to Koper et al., curbing importation of pre-ban LCMs could assist in reducing crimes with LCMs.⁸⁶⁸

California passed the country's first assault weapons ban, the *Roberti-Roos Assault Weapons Control Act*.⁸⁶⁹ A two-feature test was used to ban weapons with certain military-style features such as a barrel shroud, pistol grip, forward pistol grip, folding telescoping stock, and flash hider.⁸⁷⁰ New York state passed the Secure Ammunition and Firearms Enforcement Act of 2013 (SAFE Act) after the December 2012

⁸⁶² Ibid., 97.

⁸⁶³ Ibid.

⁸⁶⁴ Ibid.

⁸⁶⁵ Ibid.

⁸⁶⁶ Ibid., 101.

⁸⁶⁷ Ibid.

⁸⁶⁸ Ibid.

⁸⁶⁹ Jacobs (2015), 688.

⁸⁷⁰ Ibid., 688-9.

Sandy Hook Elementary School massacre.⁸⁷¹ The SAFE Act “broadened the definition of assault weapon to include any semiautomatic rifle, shotgun, or pistol that possessed one or more of the usual military-style features.”⁸⁷² Those who had firearms that were legal before the SAFE Act could keep the firearms but had to register them with the state police.⁸⁷³ Failure to register was a Class A misdemeanor.⁸⁷⁴ In order to comply with the SAFE Act firearms retailers removed military-style features from weapons in their inventory.⁸⁷⁵ Critics complained that retailers and gun owners were evading the law because they were altering weapons that were functionally the same to the banned weapons – a point gun owners were making all along.⁸⁷⁶ Additionally, assault weapons can be easily assembled by purchasing weapons parts separately.⁸⁷⁷ As a result, even after the SAFE Act, New York residents can purchase parts to construct their own assault weapon.⁸⁷⁸ See Appendix A Figures 5 through 9 for examples of these parts.

Needless to say, New York’s SAFE Act was challenged in court.⁸⁷⁹ The Second Circuit upheld the district court and upheld New York State’s assault weapons ban against claims that it violated the Second Amendment and against claims that it was unconstitutionally vague.⁸⁸⁰ The court recognized that semiautomatic assault weapons are popular with lawful gun owners, but found that “the prohibition of semi-automatic

⁸⁷¹ Ibid., 703.

⁸⁷² Ibid.

⁸⁷³ Ibid.

⁸⁷⁴ Ibid.

⁸⁷⁵ Ibid., 704.

⁸⁷⁶ Ibid.

⁸⁷⁷ Ibid., 708.

⁸⁷⁸ Ibid.

⁸⁷⁹ Ibid., 706.

⁸⁸⁰ Ibid.

rifles and large capacity magazines does not effectively disarm individuals or substantially affect their ability to defend themselves.”⁸⁸¹ “The ban leaves plaintiffs free to manufacture, purchase, and possess numerous firearm models that are functionally equivalent to the banned weapons.”⁸⁸² Furthermore, the act of banning assault weapons actually increases demand for the weapons.⁸⁸³

Current firearm laws passed in an effort to protect people vary by jurisdiction. The following are just examples. These laws include child access prevention (CAP) laws that are designed to limit children’s access and use of firearms in homes.⁸⁸⁴ Another similar law includes firearm owners required to store their firearms locked, unloaded, or both, and make firearm owners liable when children use a household firearm to threaten or harm themselves or others.⁸⁸⁵ Only three studies examined the effects of CAP laws, and only one outcome, unintentional firearms deaths, was assessed by all three.⁸⁸⁶ In the final analysis of CAP laws, too few studies have been done, and existing study findings were inconsistent.⁸⁸⁷ Additionally, CAP laws address juveniles as perpetrators of firearms violence, and available studies assessed only juvenile victims of firearm violence.⁸⁸⁸

Zero tolerance laws for firearms in schools is a result of the Gun-Free Schools Act that stipulates that each state receiving federal funds must have a state law requiring

⁸⁸¹ Ibid.

⁸⁸² Ibid.

⁸⁸³ Ibid., 709.

⁸⁸⁴ Ibid.

⁸⁸⁵ Ibid.

⁸⁸⁶ Ibid.

⁸⁸⁷ Ibid.

⁸⁸⁸ Ibid.

local schools to expel a student for at least 1 year if a firearm is found in the students possession at school.⁸⁸⁹ There were 3,523 firearms reported confiscated under the Gun-Free Schools Act in the 1998-99 school year, while school surveys indicate an estimated three-percent of the 12th grade student population in 1996 (83,350 students) reported carrying firearms on school property one or more times in the previous 30 days.⁸⁹⁰ For example, even if only 12th grade students carry firearms, fewer than 4.3% of firearms are being detected in association with the Gun-Free Schools Act.⁸⁹¹ There were no studies on the effects of zero tolerance laws on violence in schools, nor did any measure the effect of the Gun-Free Schools Act on carrying of firearms in schools.⁸⁹² The effectiveness of zero tolerance laws in preventing violence cannot be assessed because appropriate evidence was not available.⁸⁹³

Governmental jurisdictions (e.g., states or nations) can be characterized by the degree to which they regulate firearm possession and use.⁸⁹⁴ On the basis of national law assessments (the Gun Control Act of 1968 in the United States and the Criminal Law Amendment Act of 1977 in Canada), international comparisons (between the United States and Canada), and index studies (all conducted in the United States), available evidence was insufficient to determine whether the degree of firearms regulation was associated with decreased (or increased) violence.⁸⁹⁵ The findings were inconsistent,

⁸⁸⁹ Ibid.

⁸⁹⁰ Ibid.

⁸⁹¹ Ibid.

⁸⁹² Ibid.

⁸⁹³ Ibid.

⁸⁹⁴ Ibid.

⁸⁹⁵ Ibid., 8.

and most studies were methodologically inadequate to allow conclusions about casual effects.⁸⁹⁶ Additionally, even if index studies were consistent, they would not permit the specification of which laws to implement.⁸⁹⁷ “Ultimately, “the Task Force found insufficient evidence to determine the effectiveness of any of the firearms laws reviewed for preventing violence.”⁸⁹⁸

There is no doubt the United States is inundated by a dizzying array of firearm laws at the national, state and local levels. It was also revealed that some of these studies yielded inconsistent results or were poorly conducted. This makes proper analysis of their findings nearly impossible. Hopefully these studies will be conducted going forward with stricter control standards to obtain accurate data. What is apparent is that many people are not knowledgeable about firearms. Dispensing incorrect information can have a negative impact on how non-firearms proficient people feel about firearms in general and assault weapons in particular.

Summary

This thesis attempted to address the problem of mass shootings by offering a historical analysis of constitutional interpretations of the Second Amendment dissecting the nature of modern weaponry, as well as taking a longer view of what may be some of the principal causes underlying mass shootings. In Chapter 1, the thesis presented leading constitutional scholar’s interpretations of the Second Amendment, including its historical ancestor – the English Declaration of Rights, the ongoing debates between the

⁸⁹⁶ Ibid.

⁸⁹⁷ Ibid.

⁸⁹⁸ Ibid.

standard model and collective model of interpretation, and originalist interpretation. The recurring question for constitutional scholars was distinguishing between militia's and rights of individual gun owners and whether gun ownership was principally a protection against government tyranny, self-defense, use in the militia, or a combination of all three. Needless to say, this debate will continue for some time. The upshot of this chapter was that there is a wealth of commentary on the Bill of Rights and specifically the Second Amendment going back to the eighteenth century, including *The Federalist Papers*, though disputes remain with interpretation of the actual wording of the Second Amendment. Chapter 1 also presented court cases on the Second Amendment. Several cases were presented that came from state courts and the Supreme Court. Uniquely, the *Dred Scott* case was not a Second Amendment case, but included a majority opinion which served to indicate what a Chief Justice thought of the Second Amendment. Not until *Heller* in 2008 did the Supreme Court determine that the Second Amendment guaranteed an individual right to self-defense unconnected to service in a militia. However, *Heller* dealt with a handgun and the Supreme Court has yet to hear a case that would determine the status of assault weapons. The *Heller* decision also provided today's judges review options, intermediate scrutiny and strict scrutiny, to determine if the core right of the Second Amendment has been violated. It remains to be seen if using different tiers of scrutiny will stand the test of time.

In Chapter 2, the thesis presented various descriptions and definitions for firearms from federal law (NFA), a government agency (ATF) and the State of New Jersey for comparison. Different categories of firearms were presented with the

distinctions between how the various firearms function. The difference between semi-automatic and automatic is of particular importance, especially under the NFA and ATF. Firearms classified as assault weapons are examined in greater detail including how they are defined and their features. The AR-15 rifle, including various uses, is discussed. Arguments are also presented for and against large capacity magazines. Despite this discussion, firearms in general and assault weapons in particular, remain highly controversial when it comes to public policy.

Included are government statistics on firearms and crimes committed with firearms – specifically murder. While firearms in general were the primary weapon to commit murder, handguns appear to be the primary firearm used to commit murder with a gun. The FBI's Uniform Crime Reports do not distinguish between assault weapons and non-assault weapons when presenting firearm statistics. Unfortunately, it is impossible to gauge how many assault weapons had been used. Firearm use to commit crime is higher than presented in this thesis as other crimes (robbery, rape, assault, etc.) committed with firearms were not presented.

It is interesting to note that total civilian firearm production in the United States for domestic consumption exceeded nine-million guns in 2015. Domestic rifle production was 3.5 million but there were only 258 murders committed with a rifle in 2015. This does not include rifles imported to the United States nor does it include rifles produced in prior years and already in civilian possession. The ATF provided total rifle production statistics but does not keep separate statistics on how many types of rifles were produced, i.e. assault rifles, semi-automatic rifles and bolt-action rifles. When

comparing production and importation figures of firearms to the number of murders committed with a firearm the murder figure seems quite low in percentage terms. It should be noted that these statistics are readily available on the FBI and ATF web sites. It would be interesting to know how many assault weapons were produced in a given year and how many murders were committed with assault weapons. Despite this data not being available a reasonable comparison between weapons produced for civilian domestic consumption and murders committed with a firearm can be made.

Chapter 3 covers mass shootings and causes such as mental health and violence in the United States. A distinction is made between mass murder and mass shooting incident. There is no standard definition for the number of dead and wounded in a shooting incident to label the event a mass shooting. Consequently, descriptions provided by police and media may vary, however most scholars use the FBI definition of four deaths in one incident. It is generally agreed that a mass shooting incident usually occurs during a single event and exclude gang activity and organized crime.

The causes for mass shooting events can vary and cannot be narrowed down to a specific cause. Some scholars cite how news media report mass shooting incidents by sensationalizing the event. Sensationalizing certain events can make shooting incidents seem more common. A common argument made for gun control is the easy availability of guns while the argument for gun rights generally place fault on societal factors. There is a case to be made that mass shootings are a result of a failure in our mental health system. Studies have shown that those who committed mass shootings have shown overt signs of mental illness prior to the event. Increases in other crimes may lead to an

increase in murder. For instance, an increase in illegal drug trade coincided with more firearm deaths. Scholars have also cited today's violent society as another contributing factor. Homicide rates in the United States doubled after the introduction of television. One study revealed that murder rates were not associated with easy availability of guns but more to television viewing. Furthermore, violent images can easily be obtained on the internet, video games and movies.

Chapter 3 also looked at the demographics of today's gun owner and gun control. In 2015 there were roughly one-million new gun owners. It is interesting to note in contrast to long-time gun owners, they were found to be liberal, only had handguns and owned a gun for self-protection. Other research indicates that firearm ownership is prevalent among middle-aged, white men in rural areas with a higher income. Overall there were approximately 55 million, gun owners in 2015 with ten percent being new gun owners. What may be lost in these studies is the distinction between legal and illegal availability of guns. Legal gun availability did not have a significant impact on gun crime, in contrast to illegal gun availability which did have an impact. Other research has suggested that gun ownership deters crime rather than increases crime.

Lastly, chapter 3 discussed gun control. All facets of firearms from manufacturing to sale and transportation, among others, are regulated through federal, state and local laws. Gun control evolved as societal conditions changed. States began determining that some guns were more dangerous than others. Most studies in this area proved to be inconsistent or had other problems such as with methodology. This makes studying the effectiveness of these laws inconsistent. Regardless, this should not be considered as

evidence that the laws are ineffective. The federal government and state governments restrict firearm sales and possession to felons, those convicted of domestic violence, drug abusers, as well as other factors. Findings for restrictions on acquisitions revealed inconsistent results. Studies on licensing and registration also had inconsistent results. Concealed handgun laws were also covered in chapter 3. An argument in favor of concealed hand-gun laws, despite the slight increase in accidental deaths, is the reduction in murders, and the economic effects of increasing law enforcement for example. Lastly, the 1994 Assault Weapons ban is covered. The ban was also enacted during a time when violent crime was going down and continues to go down according to the FBI's Uniform Crime Reports. As a result, it is difficult to gauge if the ban actually had an impact on assault weapon use or if it was the result of other factors such as increased incarceration or a reduction in crime in other areas such as the illegal drug trade. Studies completed prior to the ban found assault weapons were used in a small fraction of crimes. Needless to say, gun control will remain a contentious subject.

In closing, the data collected unfortunately do not resolve the debate about the right to own assault weapons or if features of assault rifles should be banned. There is still much consternation over LCM's as well. Nothing found in the literature indicates possible compromises. What may be of significant value in this thesis is comparing the number of murders by firearm type to the number of firearms sold, manufactured, imported, and currently owned in the United States. Murder by firearm appears statistically small when compared to the number of firearms available. Other studies reveal the potential causes of mass shooting events such as mental health,

socioeconomic conditions, sensationalizing events by the news and entertainment, and the proliferation of violence in today's society. The question one may ask would we be better served by correcting the latter?

Appendix A: AR-15 Rifles and Parts Kits

Figure 1: PSA 16" MID 5.56 NATO Semiautomatic Carbine



Photo courtesy of Palmetto State Armory web site <https://palmettostatearmory.com/psa-16-mid-5-56-nato-1-7-nitride-moe-ept-rifle-with-rear-mbus-5165458949.html>

Figure 2: Colt AR15A4 RIFLE – “This Semi-Automatic Colt Rifle is a throwback to the full-size AR-15® which gave birth to the Modern Sporting Rifle.”



Photo and description courtesy of Colt Manufacturing LLC web site <https://www.colt.com/detail-page/colt-ar15a4-ar-15-30-1-223rem-556nato-20>

Figure 3: Colt M16A1 RETRO REISSUE Semiautomatic Rifle



Photo courtesy Colt Manufacturing LLC <https://www.colt.com/detail-page/col-crm16a1-556-20-30rd>

Figure 4: Colt M4A1 SOCOM Semiautomatic – “This classic US Military Reproduction closely replicates the markings and configuration of the M4A1 SOCOM Carbine. The lower receiver features PROPERTY OF THE US GOVT, M4A1 CARBINE, and CAL. 5.56 MM.”



Photo and description courtesy of Colt Manufacturing LLC
<https://www.colt.com/detail-page/colt-ar-15-socom-carbine-223556-161-301-knights-rail-forend>

Figure 5: PSA M4A1 STRIPPED LOWER RECEIVER



Photo courtesy of Palmetto State Armory web site
<https://palmettostatearmory.com/psa-m4a1-stripped-lower-receiver.html>

Figure 6: PSA 16" MID LENGTH 1/7 NITRIDE 15" LIGHTWEIGHT M-LOK UPPER WITH MBUS SIGHT (upper barrel assembly)



Photo courtesy of Palmetto State Armory <https://palmettostatearmory.com/psa-16-mid-1-7-nit-15-ltwt-m-lok-upper-w-bcg-ch-mbus.html>

Figure 7: PSA 20" CHF 1:7 A2 RIFLE LENGTH 5.56 NATO PREMIUM AR-15 UPPER



ASSEMBLY

Photo courtesy of Palmetto State Armory <https://palmettostatearmory.com/psa-20-chf-1-7-a2-rifle-length-556-prem-ar15-upper-assembly-w-bcg-ch.html>

A detailed view of a disassembled AR-15 style rifle. The components are laid out on a white background. The upper receiver is at the top, featuring a tan handguard and a black barrel. Below it are the lower receiver, a tan stock, a tan pistol grip, and various small parts including bolts, pins, and a large coiled spring. A black magazine is also visible on the right side.

Figure 8: PSA EPT CLASSIC LOWER BUILD KIT



Figure 9: Smith & Wesson M&P®15 Sport™ II or Fixed Stock California Compliant Semiautomatic Rifle



Photo courtesy of Smith & Wesson web site

<https://www.smith-wesson.com/firearms/mp-15-sport-ii-or-fixed-stock-ca-compliant>

Appendix B: Other Types of Semi-Automatic Rifles

Figure 1: Ruger 10/22 Model 1103 in Caliber 22LR



Photo courtesy Ruger <https://www.ruger.com/products/1022Carbine/specSheets/1103.html>

Figure 2: Ruger Mini-14 Ranch Rifle Model 5816 in Caliber 5.56 NATO



Photo courtesy Ruger <https://www.ruger.com/products/mini14RanchRifle/specSheets/5816.html>

Figure 3: Ruger Mini 30 Model 5854 in Caliber 7.62x39



Photo courtesy Ruger <https://www.ruger.com/products/miniThirty/specSheets/5854.html>

Figure 4: Springfield Armory M1A™ STANDARD ISSUE Caliber 7.62 NATO



Photo courtesy Springfield Armory <https://www.springfield-armory.com/products/standard-m1a/>

Appendix C: Military Guns

Figure 1: Sturmgewehr 44: The Nazi Assault Rifle



Photo courtesy The National Interest <https://nationalinterest.org/blog/buzz/meet-sturmgewehr-44-nazi-assault-rifle-being-used-syrian-civil-war-46602>

Figure 2: Browning Automatic Rifle (BAR) Caliber .30-06 Springfield



Photo courtesy Britannica.com <https://www.britannica.com/technology/automatic-rifle>

Figure 3: World War II era M1 Carbine (top) and M1A1 Carbine (bottom)



Photo courtesy American Rifleman <https://www.americanrifleman.org/articles/2016/5/25/the-m1a1-carbine/>

Figure 4: Comparison of Vietnam era M16 (top) and AK-47 (bottom).



Length comparison between M16 and AK-47 assault rifles

Photo courtesy Fandom https://vietnamwar.fandom.com/wiki/Comparison_of_the_AK-47_and_M16

Figure 5: Current U.S. Military M4 Carbine



Photo courtesy Military.com <https://www.military.com/equipment/m4-carbine>

Appendix D: Shotguns

Figure 1: Mossberg 500 Tactical - 8 Shot Model #50567 (12-gauge pump action)



Photo courtesy Mossberg.com <https://www.mossberg.com/product/500-tactical-8-shot-50567/>

Figure 2: Mossberg 590A1 - 9 Shot SPX Model #50771 (12-gauge pump action)



Photo courtesy Mossberg.com <https://www.mossberg.com/product/590a1-9-shot-spx-50771/>

Figure 3: Mossberg 930 Tactical - 8 Shot Model #85322 (12-gauge autoloading, a.k.a. semiautomatic)



Photo Courtesy Mossberg.com <https://www.mossberg.com/product/930-tactical-8-shot-85322/>

Figure 4: Mossberg 930 Tactical - 8 Shot SPX - Pistol Grip Model #85223 (12-gauge autoloading)



Photo courtesy Mossberg.com <https://www.mossberg.com/product/930-tactical-8-shot-spx-pistol-grip-85223/>

Figure 5: Benelli Nova Tactical Shotgun 12-gauge Pump Action



Photo courtesy BenelliUSA.com <https://www.benelliusa.com/nova-tactical-shotgun>

Figure 6: Benelli M4 Tactical Shotgun 12-gauge Semiautomatic Action



Photo courtesy BenelliUSA.com <https://www.benelliusa.com/m4-tactical-shotgun>

Appendix E: Revolvers

Figure 1: Smith & Wesson Model 66 Combat Magnum Caliber .357 and .38 caliber (capacity 6 rounds)



Photo courtesy Smith & Wesson <https://www.smith-wesson.com/firearms/model-66-combat-magnum>

Figure 2: Smith & Wesson Performance Center Model M&P R8 .357 and .38 caliber (capacity 8 rounds)



Photo courtesy Smith & Wesson <https://www.smith-wesson.com/firearms/performance-center-model-mp-r8>

Figure 3: Ruger Red Hawk Model Number 5050 Caliber 45 Auto Capacity 6 rounds



Photo courtesy Ruger.com <https://www.ruger.com/products/redhawk/specSheets/5050.html>

Appendix F: Semiautomatic Pistols

Figure 1: GLOCK 19 Gen4 Compact 9x19mm



Photo courtesy us.glock.com <https://us.glock.com/en/pistols/g19-gen4>

Figure 2: Smith & Wesson M&P 9 M2.0 4" Compact Flat Dark Earth



Photo courtesy Smith-wesson.com

<https://www.smith-wesson.com/firearms/mp-9-m20-4-compact-flat-dark-earth>

Figure 3: Beretta M9A3 9mm pistol Capacity 10 or 17 depending on model



Photo courtesy Beretta.com <http://www.beretta.com/en-us/m9a3-black/>

Figure 4: TAC Standard FS – 45 ACP Capacity 8 rounds



Photo courtesy Armscor.com <https://armscor.com/firearms/ria/tac-series/tac-standard-fs-45-acp/>

Appendix G: Ammunition Comparison

Figure 1: Photo comparing different rifle cartridge calibers



Photo courtesy Pinterest <https://www.pinterest.com/pin/403564816580153433/>

Figure 2: Rifle and handgun caliber comparison

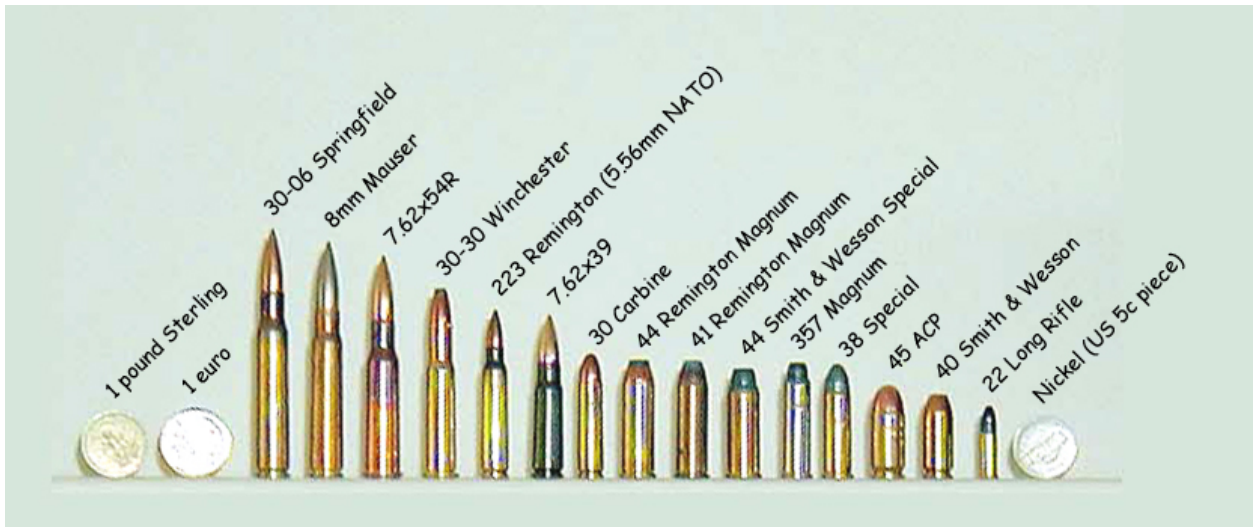


Photo courtesy Pinterest <https://www.ammoandguncollector.com/2012/07/a-couple-of-simple-ammo-comparison.html>

Figure 3: Anatomy of a shotgun shell

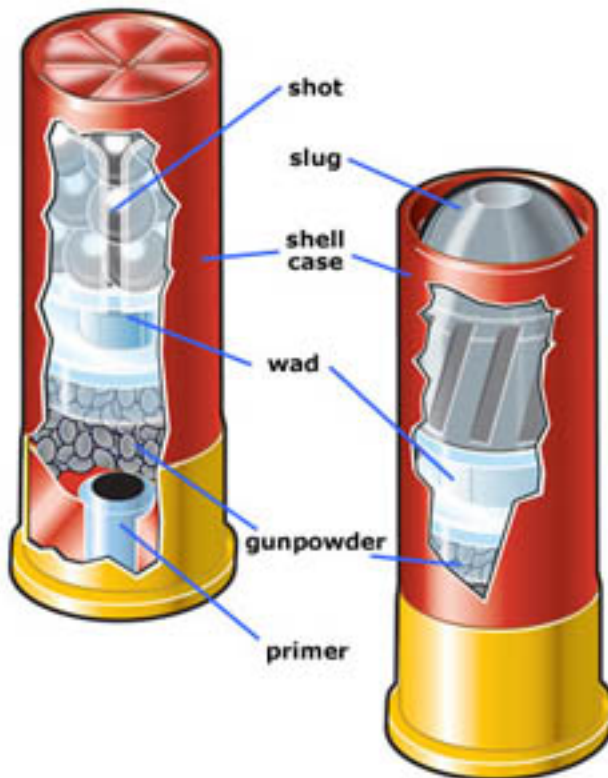


Photo courtesy thewellarmedwoman.com
<https://thewellarmedwoman.com/about-guns/ammunition-demystifier-types-of-shotgun-ammo/>

Appendix H: Charts and Tables

Expanded Homicide Data Table 8					
Murder Victims					
by Weapon, 2013–2017					
Weapons	2013	2014	2015	2016	2017
Total	12,253	12,270	13,750	15,296	15,129
Total firearms:	8,454	8,312	9,778	11,138	10,982
Handguns	5,782	5,673	6,569	7,204	7,032
Rifles	285	258	258	378	403
Shotguns	308	264	272	261	264
Other guns	123	93	177	187	187
Firearms, type not stated	1,956	2,024	2,502	3,108	3,096
Knives or cutting instruments	1,490	1,595	1,589	1,632	1,591
Blunt objects (clubs, hammers, etc.)	428	446	450	479	467
Personal weapons (hands, fists, feet, etc.) ¹	687	682	659	669	696
Poison	11	10	8	13	13
Explosives	2	7	1	1	0
Fire	94	71	84	114	103
Narcotics	53	70	75	122	97
Drowning	4	14	14	9	8
Strangulation	85	89	99	99	88
Asphyxiation	95	102	120	93	105
Other weapons or weapons not stated	850	872	873	927	979
¹ Pushed is included in personal weapons.					

Source: FBI Uniform Crime Reports

<https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/expanded-homicide-data-table-8.xls>

Exhibit 1. Firearms Manufactured (1986-2015)

Calendar Year	Pistols	Revolvers	Rifles	Shotguns	Misc. Firearms ¹	Total Firearms
1986	662,973	761,414	970,507	641,482	4,558	3,040,934
1987	964,561	722,512	1,007,661	857,949	6,980	3,559,663
1988	1,101,011	754,744	1,144,707	928,070	35,345	3,963,877
1989	1,404,753	628,573	1,407,400	935,541	42,126	4,418,393
1990	1,371,427	470,495	1,211,664	848,948	57,434	3,959,968
1991	1,378,252	456,966	883,482	828,426	15,980	3,563,106
1992	1,669,537	469,413	1,001,833	1,018,204	16,849	4,175,836
1993	2,093,362	562,292	1,173,694	1,144,940	81,349	5,055,637
1994	2,004,298	586,450	1,316,607	1,254,926	10,936	5,173,217
1995	1,195,284	527,664	1,411,120	1,173,645	8,629	4,316,342
1996	987,528	498,944	1,424,315	925,732	17,920	3,854,439
1997	1,036,077	370,428	1,251,341	915,978	19,680	3,593,504
1998	960,365	324,390	1,535,690	868,639	24,506	3,713,590
1999	995,446	335,784	1,569,685	1,106,995	39,837	4,047,747
2000	962,901	318,960	1,583,042	898,442	30,196	3,793,541
2001	626,836	320,143	1,284,554	679,813	21,309	2,932,655
2002	741,514	347,070	1,515,286	741,325	21,700	3,366,895
2003	811,660	309,364	1,430,324	726,078	30,978	3,308,404
2004	728,511	294,099	1,325,138	731,769	19,508	3,099,025
2005	803,425	274,205	1,431,372	709,313	23,179	3,241,494
2006	1,021,260	385,069	1,496,505	714,618	35,872	3,653,324
2007	1,219,664	391,334	1,610,923	645,231	55,461	3,922,613
2008	1,609,381	431,753	1,734,536	630,710	92,564	4,498,944
2009	1,868,258	547,195	2,248,851	752,699	138,815	5,555,818
2010	2,258,450	558,927	1,830,556	743,378	67,929	5,459,240
2011	2,598,133	572,857	2,318,088	862,401	190,407	6,541,886
2012	3,487,883	667,357	3,168,206	949,010	306,154	8,578,610
2013	4,441,726	725,282	3,979,570	1,203,072	495,142	10,844,792
2014	3,633,454	744,047	3,379,549	935,411	358,165	9,050,626
2015	3,557,199	885,259	3,691,799	777,273	447,131	9,358,661

Source: ATF's Annual Firearms Manufacturing and Exportation Report (AFMER).

¹Miscellaneous firearms are any firearms not specifically categorized in any of the firearms categories defined on the ATF Form 5300.11 Annual Firearms Manufacturing and Exportation Report. (Examples of miscellaneous firearms would include pistol grip firearms, starter guns, and firearm frames and receivers.)

The AFMER report excludes production for the U.S. military but includes firearms purchased by domestic law enforcement agencies. The report also includes firearms manufactured for export.

AFMER data is not published until one year after the close of the calendar year reporting period because the proprietary data furnished by filers is protected from immediate disclosure by the Trade Secrets Act. For example, calendar year 2012 data was due to ATF by April 1, 2013, but not published until January 2014.

Source ATF.gov. See page 1. <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>

Table 20
Murder
by State, Types of Weapons, 2017

State	Total murders ¹	Total firearms	Handguns	Rifles	Shotguns	Firearms (type unknown)	Knives or cutting instruments	Other weapons	Hands, fists, feet, etc. ²
Alabama ³	2	1	0	0	0	1	0	1	0
Alaska	62	37	7	3	3	24	13	8	4
Arizona	404	249	162	8	9	70	50	93	12
Arkansas	250	168	92	11	4	61	23	52	7
California	1,830	1,274	886	37	34	317	258	195	103
Colorado	218	137	88	7	4	38	37	22	22
Connecticut	102	72	30	0	1	41	11	9	10
Delaware	52	44	20	0	1	23	3	4	1
District of Columbia	116	90	89	0	0	1	15	5	6
Georgia	672	542	490	15	5	32	37	85	8
Hawaii	39	4	1	1	0	2	9	10	16
Idaho	28	13	8	4	1	0	6	3	6
Illinois ³	814	693	596	24	3	70	53	50	18
Indiana	360	291	147	14	6	124	20	39	10
Iowa	100	57	25	1	5	26	18	18	7
Kansas	129	79	44	4	7	24	16	26	8
Kentucky	263	192	128	6	6	52	25	33	13
Louisiana	566	460	216	23	12	209	46	42	18
Maine	23	12	4	0	0	8	3	4	4
Maryland	475	370	339	5	3	23	44	50	11
Massachusetts	170	99	34	0	0	65	36	29	6
Michigan	567	381	185	13	12	171	55	101	30
Minnesota	113	69	58	1	2	8	14	23	7
Mississippi	149	111	90	4	3	14	12	20	6
Missouri	596	514	224	22	8	260	25	48	9
Montana	41	17	10	2	1	4	12	5	7
Nebraska	43	31	27	2	2	0	4	5	3
Nevada	270	201	16	58	0	127	28	30	11
New Hampshire	14	7	4	0	1	2	5	1	1
New Jersey	324	242	175	7	4	56	42	29	11
New Mexico	113	71	20	2	0	49	20	19	3
New York	547	292	233	6	9	44	113	91	51
North Carolina	547	413	279	9	26	99	33	64	37
North Dakota	9	5	2	1	0	2	1	2	1
Ohio	682	485	226	5	11	243	46	128	23
Oklahoma	239	163	131	5	5	22	25	32	19
Oregon	100	58	34	2	2	20	17	22	3
Pennsylvania	735	567	452	11	8	96	63	73	32
Rhode Island	20	8	1	0	0	7	4	5	3
South Carolina	387	312	183	11	8	110	29	36	10
South Dakota	21	8	6	0	0	2	7	2	4
Tennessee	525	407	271	19	11	106	42	64	12
Texas	1,364	1,012	594	40	26	352	156	131	65
Utah	73	46	32	0	3	11	7	12	8
Vermont	14	6	1	0	0	5	6	1	1
Virginia	453	338	156	11	11	160	44	54	17
Washington	228	134	75	1	1	57	36	40	18
West Virginia	79	45	25	4	4	12	8	23	3
Wisconsin	186	149	111	4	2	32	11	17	9
Wyoming	14	6	5	0	0	1	3	3	2
Guam	1	0	0	0	0	0	0	1	0

¹ Total number of murders for which supplemental homicide data were received.

² Pushed is included in hands, fists, feet, etc.

³ Limited supplemental homicide data were received.

Source FBI Uniform Crime Reports. <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-20>

Table 22
Aggravated Assault
by State, Types of Weapons, 2017

State	Total aggravated assaults ¹	Firearms	Knives or cutting instruments	Other weapons	Personal weapons	Agency count
Alabama	15,072	2,872	1,589	9,182	1,429	242
Alaska	4,236	1,015	712	1,314	1,195	32
Arizona	22,279	5,410	3,214	5,203	8,452	97
Arkansas	11,822	4,311	1,555	2,536	3,420	265
California	104,181	19,143	17,111	36,546	31,381	729
Colorado	12,237	3,919	2,950	2,997	2,371	202
Connecticut	4,424	700	1,000	1,544	1,180	106
Delaware	2,891	953	569	1,070	299	61
District of Columbia	3,791	937	1,048	1,327	479	3
Florida	57,986	17,697	10,415	20,289	9,585	603
Georgia	22,130	7,907	3,132	5,815	5,276	484
Hawaii	1,894	180	448	652	614	4
Idaho	2,735	508	459	774	994	82
Illinois ²	1,773	1,036	146	260	331	1
Indiana	14,364	3,372	1,452	3,998	5,542	206
Iowa	6,160	921	946	1,279	3,014	200
Kansas	7,107	2,484	1,315	1,884	1,424	226
Kentucky	5,141	1,861	730	1,772	778	331
Louisiana	17,410	5,690	2,546	4,539	4,635	185
Maine	872	79	143	257	393	135
Maryland	16,528	2,933	3,552	6,384	3,659	146
Massachusetts	16,887	1,856	3,643	7,464	3,924	328
Michigan	30,457	8,591	5,314	10,182	6,370	619
Minnesota	7,091	1,640	1,229	1,793	2,429	387
Mississippi	2,650	996	327	620	707	69
Missouri	22,213	8,810	2,453	5,590	5,360	560
Montana	3,003	453	387	1,065	1,098	107
Nebraska	2,143	715	402	714	312	54
Nevada	9,651	2,579	2,025	2,954	2,093	57
New Hampshire	1,521	368	341	347	465	176
New Jersey	10,880	2,204	2,132	3,634	2,910	576
New Mexico	10,855	2,568	1,739	2,816	3,732	115
New York	43,350	4,608	10,837	13,292	14,613	525
North Carolina	18,990	8,676	2,822	3,984	3,508	277
North Dakota	1,430	46	178	414	792	106
Ohio	15,191	5,991	2,856	4,263	2,081	458
Oklahoma	12,443	2,786	1,991	4,156	3,510	394
Oregon	6,627	1,033	1,184	2,169	2,241	145
Pennsylvania	23,144	4,751	3,240	5,119	10,034	1,452
Rhode Island	1,521	298	417	490	316	49
South Carolina	15,666	6,725	2,433	3,741	2,767	350
South Dakota	2,697	217	451	586	1,443	76
Tennessee	32,148	12,019	5,689	11,476	2,964	458
Texas	71,942	22,234	14,195	22,760	12,753	951

Source FBI Uniform Crime Reports. <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-22>

Table 24**Property Stolen and Recovered**

by Type and Value, 2017

[13,681 agencies; 2017 estimated population 282,407,733]

Type of property	Value of property	
	Stolen	Recovered
Total	\$13,505,923,310	\$3,938,510,699
Currency, notes, etc.	1,366,020,962	26,879,881
Jewelry and precious metals	1,213,092,968	43,196,761
Clothing and furs	376,921,356	37,029,432
Locally stolen motor vehicles	5,562,733,246	3,289,374,602
Office equipment	451,608,653	24,186,462
Televisions, radios, stereos, etc.	394,508,873	24,585,471
Firearms	151,910,488	22,230,563
Household goods	266,677,409	10,389,743
Consumable goods	134,257,875	13,128,523
Livestock	18,251,205	2,755,916
Miscellaneous	3,569,940,275	444,753,345

Source FBI Uniform Crime Reports.

<https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-24>

Exhibit 2. Firearms Manufacturers' Exports (1986 - 2015)

Calendar Year	Pistols	Revolvers	Rifles	Shotguns	Misc. Firearms ¹	Total Firearms
1986	16,511	104,571	37,224	58,943	199	217,448
1987	24,941	134,611	42,161	76,337	9,995	288,045
1988	32,570	99,289	53,896	68,699	2,728	257,182
1989	41,970	76,494	73,247	67,559	2,012	261,282
1990	73,398	106,820	71,834	104,250	5,323	361,625
1991	79,275	110,058	91,067	117,801	2,964	401,165
1992	76,824	113,178	90,015	119,127	4,647	403,791
1993	59,234	91,460	94,272	171,475	14,763	431,204
1994	93,959	78,935	81,835	146,524	3,220	404,473
1995	97,969	131,634	90,834	101,301	2,483	424,221
1996	64,126	90,068	74,557	97,191	6,055	331,997
1997	44,182	63,656	76,626	86,263	4,354	275,081
1998	29,537	15,788	65,807	89,699	2,513	203,344
1999	34,663	48,616	65,669	67,342	4,028	220,318
2000	28,636	48,130	49,642	35,087	11,132	172,627
2001	32,151	32,662	50,685	46,174	10,939	172,611
2002	22,555	34,187	60,644	31,897	1,473	150,756
2003	16,340	26,524	62,522	29,537	6,989	141,912
2004	14,959	24,122	62,403	31,025	7,411	139,920
2005	19,196	29,271	92,098	46,129	7,988	194,682
2006	144,779	28,120	102,829	57,771	34,022	367,521
2007	45,053	34,662	80,594	26,949	17,524	204,782
2008	54,030	28,205	104,544	41,186	523	228,488
2009	56,402	32,377	61,072	36,455	8,438	194,744
2010	80,041	25,286	76,518	43,361	16,771	241,977
2011	121,035	23,221	79,256	54,878	18,498	296,888
2012	128,313	19,643	81,355	42,858	15,385	287,554
2013	167,653	21,236	131,718	49,766	22,748	393,121
2014	126,316	25,521	207,934	60,377	784	420,932
2015	140,787	22,666	159,707	18,797	1,499	343,456

Source: ATF Annual Firearms Manufacturing and Exportation Report (AFMER).

¹Miscellaneous firearms are any firearms not specifically categorized in any of the firearms categories defined on the ATF Form 5300.11 Annual Firearms Manufacturing and Exportation Report. (Examples of miscellaneous firearms would include pistol grip firearms, starter guns, and firearm frames and receivers.)

The AFMER report excludes production for the U.S. military but includes firearms purchased by domestic law enforcement agencies.

This exhibit does not include statistics related to the National Firearms Act (NFA).

Exhibit 3. Firearms Imports (1986 - 2016)

Calendar Year	Shotguns	Rifles	Handguns	Total
1986	201,000	269,000	231,000	701,000
1987	307,620	413,780	342,113	1,063,513
1988	372,008	282,640	621,620	1,276,268
1989	274,497	293,152	440,132	1,007,781
1990	191,787	203,505	448,517	843,809
1991	116,141	311,285	293,231	720,657
1992	441,933	1,423,189	981,588	2,846,710
1993	246,114	1,592,522	1,204,685	3,043,321
1994	117,866	847,868	915,168	1,880,902
1995	136,126	261,185	706,093	1,103,404
1996	128,456	262,568	490,554	881,578
1997	106,296	358,937	474,182	939,415
1998	219,387	248,742	531,681	999,810
1999	385,556	198,191	308,052	891,799
2000	331,985	298,894	465,903	1,096,782
2001	428,330	227,608	710,958	1,366,896
2002	379,755	507,637	741,845	1,629,237
2003	407,402	428,837	630,263	1,466,502
2004	507,050	564,953	838,856	1,910,859
2005	546,403	682,100	878,172	2,106,675
2006	606,820	659,393	1,166,309	2,432,522
2007	725,752	631,781	1,386,460	2,743,993
2008	535,960	602,364	1,468,062	2,606,386
2009	558,679	864,010	2,184,417	3,607,106
2010	509,913	547,449	1,782,585	2,839,947
2011	529,056	998,072	1,725,276	3,252,404
2012	973,465	1,243,924	2,627,201	4,844,590
2013	936,235	1,507,776	3,095,528	5,539,539
2014	648,339	791,892	2,185,037	3,625,268
2015	644,293	815,817	2,470,101	3,930,211
2016	736,482	729,452	3,671,837	5,137,771

Source: ATF and United States International Trade Commission.

Statistics prior to 1992 are for fiscal years; 1992 is a transition year with five quarters.

Source ATF.gov. See page 5 <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>

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